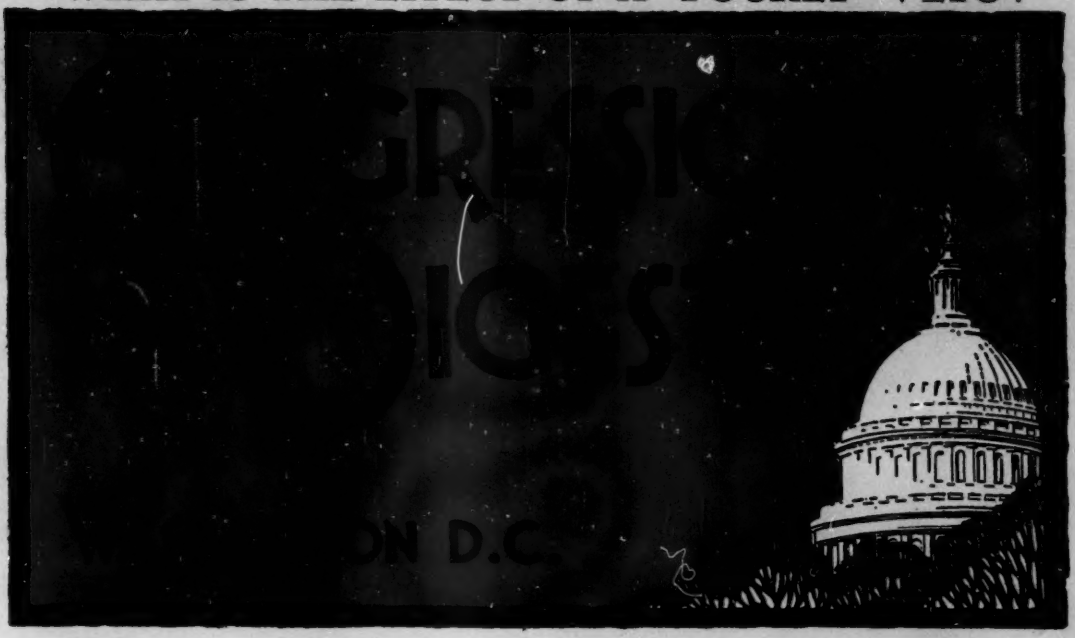
WHAT IS THE EFFECT OF A "POCKET" VETO?



DECEMBER 1928

What is the Effect of a "Pocket" Veto?

Report of the House Judiciary Committee
Decision by U. S. Court of Claims
Discussed Pro and Con

The "Short" Session Begins

Boulder Dam—Navy Cruisers—Reapportionment
Annual Message of the President
The Budget

Regular Departments

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The Congressional Digest

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The Congressional Digest

December, 1928 Vol. 7 - No. 12

The Seventieth Congress—Second Session

The Short Session Begins

By Norborne T. N. Robinson

Boulder Dam, Navy Cruisers, Kellogg Renunciation of War Treaties—House Reapportionment up for Decision—Supply Bills Must be Passed—Work of Short Session Described.

ASSEMBLING for the second or short session on December 3, the Seventieth Congress was confronted with the choice of passing several pressing pieces of legislation before the session comes automatically to an end on March 4, 1929, or of being called into extraordinary session at such time thereafter as Herbert Hoover, after he becomes President, may decide to call them.

Two bills of national importance are on the Senate calendar which passed the House at the last session and which must be acted upon at the short session or be taken up as new legislation by the Seventy-first Congress. They are the Boulder Dam bill and the Navy cruiser bill.

A new problem confronts the Senate in the Kellogg Renunciation of War Treaties.

Farm relief must be provided at the short session or considered at an extra session. Since President Coolidge vetoed the McNary-Haugen farm relief bill which passed both Houses at the last session, his veto being sustained, farm relief must be considered as new legislation and any measure dealing with it must be passed by both Houses.

Tariff revision, which is part of the farm relief problem, would also be new legislation, to be considered and passed by both Houses.

The House Reapportionment Bill

In the House a pressing problem is that of reapportionment. Pending measures covering this problem are the subject of strong controversy among the members of the Lower House.

Thus, there are three measures before the Senate which, by right of their position on the legislative program, may be considered as deserving of final disposition at the short session—the Boulder Dam bill, the Navy cruiser bill and the Kellogg treaties.

There are two problems which, while not officially before Congress on the opening day of the second session, were so prominent in public thought as to warrant a determination by Congress as to whether they would be taken up at once or postponed for consideration at an extra session—farm relief and tariff revision.

House Calendar Practically Clear

The House calendar was swept so clean at the first session that it has nothing before it but the annual supply bills and a few minor measures which originated in the Senate and passed that body at the first session, but which were not accorded final action by the House.

In spite of the importance of the above mentioned problems and their prominence in the public thought, the most vital problem of all at this session, as it is in every short session, is the passage of the annual supply bills.

These nine regular appropriation bills, together with one or two deficiency bills, must be passed and signed by the President by noon on March 4, if the Federal Government is to have funds to keep it going.

"Pass the Supply Bills"

Therefore, the slogan of the House and Senate leaders in any short session is always: "Nothing shall interfere with the supply bills."

Following its custom of several years, the House Committee on Appropriations had five subcommittees at work preparing supply bills several weeks before Congress convened. The subcommittees, as soon as they complete their work, report to the full committee, which, in turn, makes its report and sends the bills to the House. As soon as the House begins consideration of the first bill reported, the committee reports the next bill, which goes on the House calendar to await its turn.

The House allows general debate for a few days on each bill. These are field days for those Representatives who wish to make speeches, as there is no limitation on topics to be discussed. After a few days of general debate, the length of the period depending upon how much business the House has before it, debate is limited to five minute speeches and the bill is voted on section by section.

Under this method the House usually passes and sends the appropriation bills over to the Senate as fast as that body can handle them.

Cooperation by the Senate

The Senate Committee on Appropriations, to which all the supply bills are referred when they arrive from the House, is also well organized to handle its work rapidly. As it reports the bills back to the Senate they are taken up and passed. If a bill, as passed by the House, is amended by the Senate, it is immediately sent back to the House.

If the House accepts the Senate amendments, the bill goes direct to the President for signature. If the House refuses to accept the Senate amendments, a conference is asked for and the conferees iron out the differences. Reports of conference committees are always privileged on the floor of either House and receive immediate attention.

Appropriation Bills Have Right of Way

No matter what is under consideration on the floor of either House during a short session an appropriation bill is almost invariably given the right of way as soon as it comes along, since experience has taught the leaders of both parties that the only way to avoid a bad legislative jam at the close of a short session is to keep the appropriation bills moving.

With the appropriation bills as the determining feature of the short session, the leaders usually take stock of the situation and work out a program that will take care of as much of the other pressing legislation as possible.

The Legislative Program

Thus the House leaders, at the beginning of the present session, were preparing to consider the reapportionemnt bill, under the provisions of which the membership of the House would be reapportioned on the basis of the Census of 1930. Opinion on this measure among House members is sharply divided and the House is expected to be called upon for a record vote on the question of considering the bill.

There are several measures that came over from the Senate toward the close of the first session that may be considered but their disposition had not been decided upon by the House leaders on the opening day of the short session.

The Boulder Dam Bill

With the opening of the second session, the Boulder Dam bill became the outstanding question before the Senate. A vote on this bill at the first session was prevented by a determined filibuster against it during the closing days of the session. A compromise was finally reached whereby the bill was laid aside temporarily and, on the closing day, was made the unfinished business of the Senate.

Matters were further complicated when Congress reconvened by the report of the special committee appointed by the President to investigate the project. The pending bill provides for the erection of a dam at Boulder Canyon, on the Colorado River, whereas the committee recommended the erection of the proposed dam at Black Canyon. The committee further recommended that all power developed from the project should be handled by private power companies and not by the Government, as provided in the Swing-Johnson bill.

The Navy Cruiser Bill

Equally pressing in the Senate is the bill for the building of fifteen cruisers for the Navy. This bill, which passed the House at the first session, is on the consent calendar of the Senate and its friends announced prior to the opening of the session that they would ask that it be put ahead of the Boulder Dam bill.

The Kellogg Treaties

Friends of the Kellogg Renunciation of War treaties are eager that they be acted on at the short session and are expected to urge members of the Committee on Foreign Relations, to which the treaties will be referred when the President sends them to the Senate, to report them as promptly as possible.

Senate leaders anticipated on the eve of the session that the Boulder Dam bill, the Navy cruiser bill and the Kellogg treaties would be considered in that order.

Farm Relief and Tariff Doubtful

Aside from these measures already on the legislative mill—excepting the Kellogg treaties, which were due to be placed before the Senate within a few days after it met—there remained for the consideration of both Houses the problems of farm relief and tariff revision.

On how to handle these questions members of both Houses are divided. The older leaders found themselves inclined to tackle them immediately. Their thought was that a farm relief bill, dealing with the cooperative features of the program and minus the equalization fee provision of the McNary-Haugen bill, could be passed at the short session. The tariff features, they felt, could be incorporated in a general tariff revision bill to be passed either at the next regular session beginning in December, 1929, or at an extra session to be called for September or October, 1929.

The opposing view is that the Republican party pledged iself to an extra session to consider farm relief legislation; that such a session should be called for the spring of 1929 and that no attempt to pass farm relief legislation at the short session should be made.

As Congress convened these opposite opinions were being freely expressed but no decision had been reached.

The President Presents His Recommendations to Congress

Extracts from the Annual Message to Congress, December 4, 1928

NO Congress of the United States ever assembled, on surveying the state of the Union, has met with a more pleasing prospect than that which appears at the present time. In the domestic field there is tranquility and contentment, harmonious relations between management and wage earner, freedom from industrial strife, and the highest record of years of prosperity. In the foreign field there is peace, the good will which comes from mutual understanding, and the knowledge that the problems which a short time ago appeared so ominous are yielding to the touch of manifest friendship. The requirements of existence have passed beyond the standard of necessity into the region of luxury. The main source of these unexampled blessings lies in the integrity and character of the American people.

They have been able to put trust in each other and trust in their Government. Their candor in dealing with foreign governments has commanded respect and confidence.

We have been coming into a period which may be fairly characterized as a conservation of our national resources. Wastefulness in public business and private enterprise has been displaced by constructive economy. Four times we have made a drastic revision of our internal revenue system, abolishing many taxes and substantially reducing almost all others. One-third of the national debt has been paid, while much of the other two-thirds has been refunded at lower rates. It has been a method which has performed the seeming miracle of leaving a much greater percentage of earnings in the hands of the taxpayers with scarcely any diminution of the Government revenue. That is constructive economy in the highest degree. It is the corner stone of prosperity. It should not fail to be continued.

There is no surplus on which to base further tax revision at this time. Last June the estimates showed a threatened deficit for the current fiscal year of $94,000,000. Under my direction the departments began saving all they could out of their present appropriations. The combination of economy and good times now indicates a surplus of less than 1 per cent of our expenditures and makes it obvious that the Treasury is in no condition to undertake increases in expenditures to be made before June 30. It is necessary therefore during the present session to refrain from new appropriations for immediate outlay, or if such are absolutely required to provide for them by new revenue; otherwise, we shall reach the end of the year with the unthinkable result of an unbalanced budget. I am certain that the Congress would not pass and I should not feel warranted in approving legislation which would involve us in that financial disgrace.

On the whole the finances of the Government are most satisfactory. The enormous savings made have not been at the expense of any legitimate public need. The Government plant has been kept up and many improvements are under way, while its service is fully manned and the general efficiency of operation has increased. We have been enabled to undertake many new enterprises.

Foreign Relations

When we turn from our domestic affairs to our foreign relations, we likewise perceive peace and progress. During the year we have signed 11 new arbitration treaties, and 22 more are under negotiation.

South America—This Government has invited the other 20 nations of this hemisphere to a conference on conciliation and arbitration, which meets in Washington on December 10. All the nations have accepted and the expectation is justified that important progress will be made in methods for resolving international differences by means of arbitration.

Nicaragua—When revolution broke out in Nicaragua, at repeated entreaties of its Government I dispatched our Marine forces there to protect the lives and interests of our citizens. Colonel Stimson secured an agreement that warfare should cease, a national election should be held and peace should be restored. Both parties conscientiously carried out this agreement. A free and fair election has been held and has worked out so successfully that both parties have joined in requesting like cooperation from this country at the election four years hence. Nicaragua is regaining its prosperity and has taken a long step in the direction of peaceful self-government.

Tacna-Arica—Differences between Chile and Peru have been sufficiently composed so that diplomatic relations have been resumed. Negotiations are hopefully proceeding for the final adjustment of the differences over their disputed territory.

Mexico—Our relations with Mexico are on a satisfactory basis. Frank and friendly negotiations promise a final adjustment of all unsettled questions. Ambassador Morrow has been able to bring our countries to a position of confidence in each other and of respect for mutual sovereign rights.

China—The situation in China has been much composed. The Nationalist Government has established itself over the country. We have recognized this Government, and have negotiated a treaty restoring to China complete tariff autonomy and guaranteeing our citizens against discriminations. Our trade in that quarter is increasing and our forces are being reduced.

Greek and Austrian Debts—Pending before the Congress is a recommendation for the settlement of the Greek debt and the Austrian debt. Our country can afford to be generous. Congress has already granted Austria a long-time moratorium, which it is understood will be waived and immediate payments begun on her debt on the same basis which we have extended to other countries.

Peace Treaty

One of the most important treaties ever laid before the Senate of the United States will be that which the 15 nations recently signed at Paris, and to which 44 other nations have declared their intention to adhere, renouncing war as a national policy and agreeing to resort only to peaceful means for the adjustment of international differences. It is the most solemn declaration against war, the most positive adherence to peace, that it is possible for sovereign nations to make. It does not supersede our inalienable sovereign right and duty of national defense or undertake to commit us before the event to any mode of action which the Congress might decide to be wise if ever the treaty should be broken. But it is a new standard in the world around which can rally

the informed and enlightened opinion of nations to prevent their governments from being forced into hostile action by the temporary outbreak of international animosities. The observance of this covenant, so simple and so straight-forward, promises more for the peace of the world than any other agreement ever negotiated among the nations.

National Defense

To insure our citizens against the infringement of their legal rights at home and abroad, to preserve order, liberty, and peace by making the law supreme, we have an Army and a Navy. Our Army could not be much reduced, but does not need to be increased. Our Navy, according to generally accepted standards, is deficient in cruisers. The bill before the Senate with the elimination of the time clause should be passed. We have no intention of competing with any other country. This building program is for necessary replacements and to meet our needs for defense. Our defensive needs do not call for any increase in the number of men in the Army or the Navy. We have reached the limit of what we ought to expend for that purpose.

I wish to repeat again that this country is neither militaristic nor imperialistic. Many people at home and abroad, who constantly make this charge, are the same ones who are even more solicitous to have us extend assistance to foreign countries. When such assistance is granted, the inevitable result is that we have foreign interests. For us to refuse the customary support and protection of such interests would be in derogation of the sovereignty of this Nation. As for smaller countries, we certainly do not want any of them. We are more anxious than they are to have their sovereignty respected. Our entire influence is in behalf of their independence.

The position of this Government relative to the limitation of armaments, results secured, and developments are well known to the Congress.

Veterans

The magnitude of our present system of veterans' relief is without precedent. These measures have omitted nothing in their desire to deal generously and humanely. We should continue to foster this system and provide all the facilities necessary for adequate care. It is the conception of our Government that the pension roll is an honor roll. It should include all those who are justly entitled to its benefits, but exclude all others.

Expenditures for all forms of veterans' relief are increasing from year to year. Further amendments to the existing law will be suggested, and it may be necessary for administrative purposes, or in order to remove some existing inequalities in the present law, to make further changes. The proposal of any additional legislation dealing with this subject should receive most searching scrutiny from the Congress. You are familiar with the suggestion that the various public agencies now dealing with matters of veterans' relief be consolidated in one Government department. I recommend that a survey be made by Congress dealing with this subject, in order to determine whether legislation to secure this consolidation is desirable.

Agriculture

The present status of agriculture, although greatly improved over that of a few years ago, bespeaks the need of further improvement. While developments in fundamental research, regulation, and dissemination of agricultural information are of distinct help to agriculture, additional effort is needed. The surplus problem demands attention. The Government should assume no responsibility in normal times for crop surplus clearly due to overextended acreage. The Government should provide reliable information as a guide to private effort; fundamental research on prospective supply and demand, as a guide to production and marketing, should be encouraged. Expenditure of public funds to bring in more new land should have most searching scrutiny, so long as our farmers face unsatisfactory prices for crops and livestock produced on land already under cultivation.

Improvement has been made in grazing regulation in the forest reserves, not only to protect the ranges, but to preserve the soil from erosion. Similar action is urgently needed to protect other public lands which are now overgrazed and rapidly eroding.

Putting the Government directly into business, subsidies, and price fixing, and the alluring promises of political action as a substitute for private initiative, should be avoided.

There should be created a Federal farm board consisting of able and experienced men empowered to advise producers' associations in establishing central agencies or stabilization corporations to handle surpluses, to seek more economical means of merchandising, and to aid the producer in securing returns according to the quality of his product. A revolving loan fund should be provided for the necessary financing until these agencies shall have developed means of financing their operations through regularly constituted credit institutions. Such a bill should carry authority for raising the money, by loans or otherwise, necessary to meet the expense, as the Treasury has no surplus.

Agriculture has lagged behind industry in achieving that unity of effort which modern economic life demands. The cooperative movement, which is gradually building the needed organization, is in harmony with public interest and therefore merits public encouragement.

While successive reductions in Federal taxes have relieved most farmers of direct taxes to the National Government, State and local levies have become a serious burden. This problem needs immediate and thorough study with a view to correction at the earliest possible moment. It will have to be made largely by the States themselves.

Commerce

The activities of the Department of Commerce have contributed largely to the present satisfactory position in our international trade. There should be no slackening of effort in that direction. It is also important that the department's assistance to domestic commerce be continued. There is probably no way in which the Government can aid sound economic progress more effectively than by cooperating with our business men to reduce wastes in distribution.

Commercial Aeronautics—Continued progress in civil aviation is most gratifying. With the rapid growth of air mail, express, and passenger service, this new transportation medium is daily becoming a more important factor in commerce. It is noteworthy that this development has taken place without governmental subsidies.

Cuban Parcel Post

I desire to repeat my recommendation of an earlier message, that Congress enact the legislation necessary to make permanent the Parcel Post Convention with Cuba.

"Maine" Battleship Memorial

As a testimony of friendship and appreciation of the Cuban Government and people he [the President of Cuba] most generously offered to present to the United States a marble statue to the memory of the men who perished in the destruc-

tion of the battleship *Maine*. I urge the Congress to provide by law for some locality where it can be set up.

Railroads

While consolidations can and should be made under the present law, yet the provisions of the act of 1920 have not been found fully adequate to meet the needs of other methods of consolidation. A bill was reported out late in the last session which I understand has the approval in principle of the Interstate Commerce Commission. It is to be hoped that this legislation may be enacted at an early date. The interstate commerce law requires definition and clarification in several other respects, which have been pointed out by the Interstate Commerce Commission. It will promote the public interest to have the Congress give early consideration to the recommendations made.

Merchant Marine

The cost of maintaining the United States Government merchant fleet has been steadily reduced. We have established American flag lines in foreign trade where they had never before existed. There have been sold to private American capital for operation within the past few years 14 of these lines, which, under the encouragement of the recent legislation passed by the Congress, give promise of continued successful operation. Additional legislation from time to time may be necessary to promote future advancement under private control.

Through the cooperation of the Post Office Department and the Shipping Board long-term contracts are being made with American steamship lines for carrying mail. It should be our policy to maintain necessary strategic lines under the Government operation until they can be transferred to private capital.

Inter-American Highway

We should lend our encouragement for more good roads to all the principal points on this hemisphere south of the Rio Grande. We should provide our southern neighbors, if they request it, with engineer advisors for the construction of roads and bridges. Private interests should look with favor upon all reasonable loans sought by these countries to open main lines of travel.

Air Mail Service

The friendly relations and the extensive commercial intercourse with the Western Hemisphere to the south of us are being further cemented by the establishment and extension of air-mail routes. The air service already spans our continent.

Waterways

Our river and harbor improvements are proceeding with vigor. The Ohio River is almost ready for opening; work on the Missouri and other rivers is under way. In accordance with the Mississippi flood law Army engineers are making investigations and surveys. Our barge lines are being operated under generous appropriations, and negotiations are developing relative to the St. Lawrence waterway. To secure the largest benefits from all these waterways joint rates must be established with the railroads, preferably by agreement, but otherwise as a result of congressional action.

We have recently passed several river and harbor bills. Until we can see our way out of this expense no further river and harbor legislation should be passed, as expenditures to put it into effect would be four or five years away.

Irrigation of Arid Lands

For many years the Federal Government has been committed to the wise policy of reclamation and irrigation. On the whole the service has been of such incalculable benefit in so many States that no one would advocate its abandonment. The program to which we are already committed will tax the resources of the reclamation fund over a period of years.

Readjustments authorized by the reclamation relief act of May 25, 1926, have given more favorable terms of repayment to settlers. The demand for still smaller yearly payments on some projects continues. These conditions should have consideration in connection with any proposed new projects.

Colorado River

For several years the Congress has considered the erection of a dam on the Colorado River for flood-control, irrigation, and domestic water purposes. The Congress will have before it the detailed report of a special board appointed to consider the engineering and economic feasibility of this project. Their conclusions appear sufficiently favorable, that I feel warranted in recommending a measure which will protect the rights of the States, discharge the necessary Government functions, and leave the electrical field to private enterprise.

Muscle Shoals

By dividing [this] property into its two component parts of power and nitrate plants it would be possible to dispose of the power, reserving the right to any concern that wished to make nitrates to use any power that might be needed for that purpose. If the Congress would grant the Secretary of War authority to lease the nitrate plant on such terms as would insure the largest production of nitrates, the entire property could begin to function. Such a division, I am aware, has never seemed to appeal to the Congress. I should also gladly approve a bill granting authority to lease the entire property for the production of nitrates. I wish to avoid building another dam at public expense. Nor do I think this property should be made a vehicle for putting the U. S. Government indiscriminately into the private and retail field of power distribution and nitrate sales.

Conservation

The practical application of economy to the resources of the country calls for conservation. We have a conservation board working on our oil problem. This is of the utmost importance to the future well-being of our people.

While the area of lands remaining in public ownership is small, the natural resources are of immense present and future value. The proper bureaus have been classifying these resources to the end that they may be conserved. Appropriate estimates are being submitted, in the Budget, for the further prosecution of this important work.

Immigration

The policy of restrictive immigration should be maintained. Authority should be granted the Secretary of Labor to give immediate preference to learned professions and experts essential to new industries. The reuniting of families should be expedited. Our immigration and naturalization laws might well be codified.

Wage Earner

The only limit to profits and wages is production. Here and there the councils of labor are still darkened by the theory that only by limiting individual production can there

be any assurance of permanent employment for increasing numbers, but in general, management and wage earner alike have become emancipated from this doom and have entered a new era in industrial thought which has unleashed the productive capacity of the individual worker with an increasing scale of wages and profits, the end of which is not yet. The Government should cooperate with private interests to eliminate the waste arising from industrial accidents.

Women and Children

The Federal Government should continue its solicitous care for the 8,500,000 women wage earners and its efforts in behalf of public health, which is reducing infant mortality and improving the bodily and mental condition of our citizens.

Civil Service

The most marked change made in the civil service of the Government in the past eight years relates to the increase in salaries—an increase in seven years of over 63 per cent. While in the upper brackets the pay in the Federal service is much smaller than in private employment, in the lower brackets, ranging well up over $3,000, it is much higher. It is higher not only in actual money paid, but in privileges granted—a vacation with additional time for sick leave and the generous provisions of the retirement act. No other body of public servants ever occupied such a fortunate position.

Education

While this province belongs peculiarly to the States, yet the promotion of education and efficiency in educational methods is a general responsibility of the Federal Government. A survey of negro colleges and universities in the United States has just been completed by the Bureau of Education and recommendations were made for its advancement. The Bureau of Education now has under way the survey of agricultural colleges, authorized by Congress. It is now proposed to undertake a survey of secondary schools, which educators insist is timely and essential.

Public Buildings

We have laid out a public building program for the District of Columbia and the country at large running into hundreds of millions of dollars, the greatest building program ever assumed by this Nation. When it reaches completion the people will be well served and the Federal city will be supplied with the most beautiful and stately public buildings which adorn any capital in the world.

The American Indian

The Government's responsibility to the American Indian has been acknowledged by annual increases in appropriations to fulfill its obligations to them and to hasten the time when Federal supervision of their affairs may be properly and safely terminated. The movement in Congress and in some of the State legislatures for extending responsibility in Indian affairs to States should be encouraged. A complete participation by the Indian in our economic life is the end to be desired.

The Negro

For 65 years now our negro population has been under the peculiar care and solicitude of the National Government. The progress which they have made in education and the professions, in wealth and in the arts of civilization, affords one of the most remarkable incidents in this period of world history. Every encouragement should be extended for the development of the race. The colored people have been the victims of the crime of lynching, which has in late years somewhat decreased. Some parts of the South already have wholesome laws for its restraint and punishment. Their example might well be followed by other States, and by such immediate remedial legislation as the Federal Government can extend under the Constitution.

Philippine Islands

Under the guidance of Governor General Stimson the economic and political conditions of the Philippine Islands have been raised to a standard never before surpassed. The cooperation between his administration and the people of the islands is complete and harmonious. It would be an advantage if relief from double taxation could be granted by the Congress to our citizens doing business in the islands.

Porto Rico

Due to the terrific storm that swept Porto Rico last September, the people of that island suffered large losses. Sugar, tobacco, citrus fruit, and coffee, all suffered damage. The first three can largely look after themselves. The coffee growers will need some assistance, which should be extended strictly on a business basis, and only after most careful investigation.

Department of Justice

It is desirable that all the legal activities of the Government be consolidated under the supervision of the Attorney General. Additional legal positions not under the supervision of the Attorney General have been provided until there are now over 900. Such a condition should be corrected by appropriate legislation.

Special Government Counsel

In order to prosecute the oil cases, I suggested and the Congress enacted a law providing for the appointment of two special counsel. I recommend the passage of an amendment to the law creating their office exempting them from the general rule against taking other cases involving the Government.

Prohibition

The country has duly adopted the eighteenth amendment. The Federal enforcement bureau is making every effort to prevent violations. The Federal Government is doing and will continue to do all it can in this direction and is entitled to the active cooperation of the States.

Conclusion

The country is in the midst of an era of prosperity more extensive and of peace more permanent than it has ever before experienced. It is too easy under their influence for a nation to become selfish and degenerate. This test has come to the United States. Our country has been provided with the resources with which it can enlarge its intellectual, moral, and spiritual life. The issue is in the hands of the people. Our faith in man and God is the justification for the belief in our continuing success.—*Extracts.*

Budget of the United States, 1930

As Transmitted to Congress by the President December 5, 1928

THE estimated receipts for the fiscal year 1928, as given in the 1929 Budget, were $4,075,598,091 and the expenditures $3,621,314,285. The year closed with actual receipts of $4,042,348,156.19, and expenditures $3,643,519,875.13. We were thus given an actual surplus of $398,828,281.06 that year, which is $55,000,000 less than the estimate. Taking into consideration that subsequent to the transmission of the 1929 Budget we spent $50,000,000 for carrying out the provisions of the settlement of war claims act of 1928, approved March 10, 1928, the real difference between the estimated and actual surplus for 1928 is but $5,000,000.

Forecast for 1929

This current year, 1929, the outlook is not so bright. In the Budget for 1929, transmitted to the Congress in December, 1927, our receipts were estimated at $3,809,497,314 and expenditures $3,556,957,031. This indicated a surplus of $252,540,283. This forecast has been materially changed. With actual operations for four months of the current fiscal year of record and a clearer conception of what we face, the estimate is now that our surplus this year will be $36,990,192. While this margin of receipts over expenditures is small, it is most gratifying, as on July 1, last, the best estimate that could be made indicated a deficit of about $94,000,000. The surplus now estimated is based on receipts amounting to $3,831,735,661 and expenditures of $3,794,745,469. The difference between the estimate of a year ago and this estimate is primarily reflected in the expenditure figures which have increased $238,000,000. The postal deficit accounts for $68,000,000 of this estimated increase in expenditures. Included in that amount is approximately $9,000,000 for overtime pay of postal personnel, $9,000,000 for carrying ocean and air mail, $14,000,000 for increase in rail transportation rates, and $36,000,000 reduction in postal revenues. Expenditures for flood control account for $16,000,000. Public buildings under the Treasury Department and roads under the Department of Agriculture account for $26,000,000. Increases in the amount of pensions account for $11,000,000 and increases in pay of Federal personnel for $21,000,000. Tax refunds show an estimated increase of $18,000,000 and interest $5,000,000, while the Navy and Shipping Board expenditures account for $26,000,000. These are the major items which enter into the increase.

The Indicated Surplus for 1930

For the coming fiscal year, 1930, the estimate is that the receipts will amount to $3,841,295,829 and the expenditures $3,780,719,647, indicating a surplus of $60,576,182. The surplus margin for both this year, 1929, and next year, 1930, is small. It is, however, satisfactory, as it points to a balanced Budget. It is clear that we can not assume any great additional expenditures without jeopardizing this favorable outlook. We are committed irrevocably to a balanced Budget and that carries the assurance that the only revision of our tax laws which will be considered is a revision downward. We have no immediate prospect of any further reduction in tax rates; but we have no thought of curtailing in any way the benefits which have gone to the people by the four reductions already made in taxes.

The French Debt

On August 1, 1929, bonds of the French Government aggregating $400,000,000 will mature. At the conclusion of hostilities the American Expeditionary Forces in France had accumulated in that country vast stores of supplies, materials and equipment. Under the authority granted by the act of July 9, 1918, it was decided to dispose of these supplies in France. The President, therefore, created under the War Department the United States Liquidation Commission, whose main duty was to settle claims and dispose of this surplus property stored in France. The commission appraised the value of the materials for the purpose of the bulk sale to France at $562,230,800. After offsetting certain claims and counterclaims and taking into consideration the contention of the French Government that some of the supplies carried into France were subject to customs duties estimated at $150,000,000, it was agreed to transfer these supplies to the French Government, the latter to give in payment its 10-year 5 per cent bonds, dated August 1, 1919, in the amount of $400,000,000, interest thereon to be payable semiannually from and after August 1, 1920. Under the terms of this contract the French Government delivered to the United States 400 of its 10-year gold bonds in the face amount of $1,000,000 each. These are the bonds that are due and payable August 1, 1929. Semiannual interest on these obligations has been paid punctually.

France Buys American War Supplies

In addition to the foregoing France purchased other supplies from the War Department stocks in the United States for which it gave obligations aggregating $7,341,145.01, of which $6,566,762.42 mature on May 9, 1930, and $774,382.59 on July 5, 1930.

All of the above-mentioned obligations were merged with the total obligations of France and included in the debt settlement agreement between the United States and France dated April 29, 1926, which funded the French indebtedness to the United States and under which the payments from France are spread over a 62-year period, with a material reduction in the interest rate. If, therefore, the debt agreement is ratified by the French Government and by the Congress of the United States prior to August 1, 1929, these obligations will not mature but will have become merged in the general indebtedness funded under the debt settlement.

The $406,566,762.42 due in the fiscal year 1930 has not been included in the estimates of receipts for the reason that it is still expected the agreement of April 26, 1926, may be ratified prior to the maturity of these bonds. If, in accordance with the terms of this agreement, it is ratified in France, it is recommended that it receive the prompt ratification of the Congress of the United States.

If the agreement is not ratified, it is believed that the

$406,566,762.42 should be applied to the retirement of our war debt rather than treated as current receipts available for current expenditures.

Flood Control

For the purposes of flood control the estimates contained in this Budget carry $31,000,000. That is the additional amount which the War Department states will be required to meet expenditures in 1930. If it should develop that more funds are required by the War Department for this purpose to meet the needs for that fiscal year, a further estimate will be presented to the Congress.

Building

We are engaged upon one of the most ambitious and extensive building programs of peace-time history. When war was declared there had been appropriated by the Congress approximately $60,000,000 for projects widely scattered throughout the country, of which $30,000,000 remained unexpended. Building sites, some 150 in number, had been bought and construction thereon of needed public buildings was soon to begin. Imperative war demands postponed all activities of the sort, and when the war ended we faced serious lack of suitable office and housing space to meet the demands of materially enlarged governmental activities—not only enlarged but rapidly increasing. Postwar reconstruction demands, an extraordinary debt and crushing taxes further deferred remedial action in the matter of governmental building requirements.

National Public Building Act

Reduction in expenditures and resulting reduction in taxes warranted in the year 1926 enactment of a national public building act which launched a building program of $50,000,000 in the District of Columbia, where need of new and suitable accommodations was most urgent, and construction programs for the rest of the country totaling $115,000,000. In 1928 the Congress amended this act by increasing the total by $100,000,000, making a grand total of $265,000,000 for public buildings for the civil purposes of the Government. In 1928 a subsequent act authorized an ependiture of $25,000,000 for the procurement of additional land within the so-called triangle in the District of Columbia, needed for building purposes, thereby increasing the total provision for these general building purposes to $290,000,000. There has already been appropriated under these acts $68,617,083.56, and $28,040,000 is carried in the estimates for 1930. Contracts have been let for 71 projects totaling $19,881,152, of which 35 have been completed and 36 are under construction, to cost $14,635,952. The foregoing figures are exclusive of $8,000,000 for the appraisers stores building in New York City, the full amount of which has been appropriated.

The Army Building Program

The Army has well under way a building program, exclusive of air service hangars and like structures, of $118,000,000. There has already been appropriated for this purpose $20,751,409 and $15,041,950 is carried in the estimates for 1930, with $3,000,000 additional authorized for obligation by contract. The estimates for 1930 also carry for technical and other buildings for the air services of the Army and Navy a total in round numbers of $4,500,000.

Additional hospital facilities for the Veterans' Bureau to the extent of $15,000,000 have also been authorized by Congress, of which $7,000,000 has been appropriated. The Budget estimates for 1930 provide $6,000,000 and in addition an authorization for obligation by contract of $2,000,000.

The act of May 7, 1926, authorized an expenditure of $10,000,000 for houses and offices for our foreign representatives. The program is a 5-year project, appropriations being limited to $2,000,000 a year. There has been appropriated for these purposes $2,435,000, while the estimates for 1930 call for $2,000,000.

These figures show a program, exclusive of technical buildings for air activities, which involves for its completion some $433,000,000.

National Defense

Ample provision is made in these estimates for national defense, the estimates for 1930 calling for $648,511,300 for the Army and Navy. This amount is reached after excluding from Army and Navy estimates all nonmilitary items so that the figure given is the amount provided for purely military purposes. The actual expenditure for 1927 was $558,004,447; for 1928 it was $596,500,896; the estimated expenditure for 1929 is $672,844,288; while the estimated expenditure, as distinguished from appropriation estimates, is $668,277,712 for 1930. In submitting the annual Budget for 1926 the Chief Executive stated that the amount carried in that Budget for national defense was $549,000,000 and that in his opinion we could have adequate national defense with a more modest outlay of the taxpayers' money. Nevertheless our defense estimates have steadily climbed until the cash requirements have advanced for 1930 by approximately $100,000,000 more than was estimated for 1926. This increase, however, is more apparent than real, for in these prior years the defense establishments have had the use of surplus supplies left over from the war. As these reserves have become depleted it has bcome necessary to increase the cash provision to take their place.

Air Service

The air interests of the Government are developing in a most satisfactory manner. The demands of this service while large have been adequately met. The 5-year program for the Army and Navy is approaching completion. Provision is made in these estimates for the third year increment of the Army and the fourth year increment of the Navy, and it is a fair assumption that at the end of 1931 the Navy will have a well-balanced fleet of 1,000 airplanes, while at the end of 1932 the Army will be in possession of 1,800 planes in proper proportion as to types. The necessary housing and other construction for the Army and Navy air forces are also provided for. The expansion of air activities, however, is by no means confined to the Army and Navy. The Department of Commerce, the Coast Guard, and the Department of Agriculture are playing their parts in the developing air program as is the National Advisory Committee for Aeronautics. While the Post Office Department definitely retired from the business of carrying mails in 1928, there is provided for 1930 for contract air mail service in the United States the sum of $14,300,000 and $4,000,000 additional for foreign air mail. While this is not Government-operated service it is Government supported and can properly be cited as contributing materially to air service development. These estimates carry $6,427,260 for the Department of Commerce to carry on its important task in connection with commercial aviation. This estimate contemplates, among other items, the construction of 4,000 additional miles of lighted airways. There is provision in these estimates of $582,500 for the Department of Agriculture

Continued on page 338

Summary of Receipts and Expenditures

As Included in the Budget, 1930

(Exclusive of postal revenues and postal expenditures paid from postal revenues)

	Estimated, 1930	Estimated, 1929	Actual, 1928
Receipts:			
Customs	$582,000,000.00	$582,000,000.00	$568,986,188.50
Income tax	2,175,000,000.00	2,165,000,000.00	2,173,952,556.73
Miscellaneous internal revenue	559,000,000.00	577,500,000.00	621,018,665.64
Miscellaneous receipts	525,295,829.00	507,235,661.00	678,390,745.32
Total receipts	3,841,295,829.00	3,831,735,661.00	4,042,348,156.19
Total expenditures (including reduction of the public debt required by law to be made from ordinary receipts)	3,780,719,647.00	3,794,745,469.00	3,643,519,875.13
Excess of receipts	60,576,182.00	36,990,192.00	398,828,281.06

Analysis of Expenditures and Estimates

	Estimates of appropriations, 1930	Appropriations, 1929*
Legislative establishment	$18,919,730.64	$17,913,873.26
Executive Office	458,120.00	437,180.00
Independent establishments:		
Alaska relief funds	15,000.00	15,000.00
American Battle Monuments Commission	600,000.00	700,000.00
Arlington Memorial Bridge Commission	2,000,000.00	2,300,000.00
Board of Mediation	348,270.00	347,902.00
Board of Tax Appeals	725,863.00	720,740.00
Bureau of Efficiency	228,130.00	210,350.00
Civil Serive Commission	1,251,562.00	1,130,352.00
Commission of Fine Arts	9,080.00	7,300.00
Employees' Compensation Com.	4,077,326.00	3,755,010.00
Federal Board of Vocational Education	8,176,120.00	8,220,000.00
Federal Power Commission	179,500.00	120,890.00
Federal Radio Commission	164,440.00	364,027.00
Federal Reserve Board	2,605,741.00	2,700,000.00
Federal Trade Commission	1,289,760.00	1,048,000.00
General Accounting Office	4,132,000.00	3,820,000.00
Housing Corporation	397,950.00	475,750.00
Interstate Commerce Com.	8,213,825.00	7,654,745.00
National Advisory Committee for Aeronautics	1,300,000.00	600,000.00
Public Buildings and Public Parks	2,888,061.00	2,652,980.00
Smithsonian Institution	1,107,573.00	1,004,162.00
Tariff Commission	815,000.00	754,000.00
United States Geographic Board	9,200.00	4,300.00
United States Shipping Board and Merchants Fleet Corp.	9,994,000.00	13,688,750.00
United States Veterans' Bureau	597,375,000.00	560,060,000.00
Miscellaneous	.....	214,374.00
Total, Executive Office and independent establishments	$648,361,521.00	$613,005,812.00
Department of Agriculture	$154,232,131.00	$154,723,793.88
Department of Commerce	58,459,749.00	38,375,530.00
Department of the Interior	310,957,045.78	300,632,539.00
Department of Justice	28,103,570.00	26,808,062.50
Department of Labor	10,719,430.00	11,078,340.00
Navy Department	349,125,482.00	364,233,362.00
Post Office Department, postal deficiency, payable from Treasury	71,209,325.00	83,495,830.00
State Department	14,744,831.43	14,466,236.39
Treasury Department	329,698,615.80	345,940,278.00
War Department, including Panama Canal	444,835,222.00	408,605,351.50
District of Columbia	39,935,622.00	40,357,308.00
Total, ordinary	$2,479,302,275.65	$2,419,636,316.53
Reduction in principal of the public debt:		
Sinking fund	$379,524,129.02	$370,153,407.56
Other redemptions of the debt	173,543,500.00	172,289,300.00
Principal of the public debt	$553,067,629.02	$542,442,707.56
Interest on the public debt	640,000,000.00	675,000,000.00
Total payable from Treasury	$3,672,369,904.67	$3,637,079,024.09
Postal Service payable from postal revenues	745,000,000.00	690,949,212.00
Total, including Post Office Department and Postal Service	$4,417,369,904.67	$4,328,028,236.09

* Exclusive of additional amounts required to meet the provisions of the act approved May 28, 1928, amending the classification act of 1923, approximately $20,000,000.

The President's Committee Reports on Boulder Dam

Findings of Special Committee of Experts Appointed by President Coolidge to Study the Colorado River Problem

IF no other site were available, the Boulder Canyon site could safely be used so far as geological conditions are concerned. In comparison with the Black Canyon site, however, the latter has certain advantages.

The Black Canyon Site

The most favorable location in Black Canyon is about 40 miles distant from Las Vegas, Nevada, and the Union Pacific Railroad. The approach is comparatively easy to the vicinity, and not particularly difficult to the site itself. A construction railway from Las Vegas would pass near available gravel deposits and the best quarry sites lie immediately adjacent to the damsite on the same line of approach. Despite the ruggedness of the surrounding country and the depth of the gorge, the terrain above the 1,500-foot contour, where the quarries, railway yards, shops and camps would be located, is open, and its development into such use at reasonable cost is entirely practicable.

The Canyon walls at this site rise to about 900 feet above the river and the central part of the rock gorge at this location is 110 to 127 feet deep below low water. The cross-section of the gorge at the damsite is 350 feet wide at the low-water line and 880 feet wide at the crest of a dam that would impound 26,000,000 acre-feet of water.

An Impervious Foundation

The foundation is a volcanic breccia or tuff, originally an accumulation of fragments of many kinds derived from volcanic eruptions, and now transformed into a well-cemented, tough, durable mass of rock standing with remarkably steep walls, and resisting the attack of weather and erosion exceptionally well. The whole rock mass is essentially impervious.

The rock formation is somewhat jointed and exhibits occasional fault displacements, which are now completely healed. It is an almost ideal rock for tunneling, is satisfactory in every essential, and is suitable for use in construction.

The associated rock formations at higher levels, more advantageously situated for development for construction uses, are also volcanic in origin, including both andesite flows and indurated andesitic tuffs, and are of excellent quality for that purpose. Nearby there are deposits of angular gravels that have been proven by test to be suitable for use in construction.

Comparison of the Two Sites

In general, geologic conditions at Black Canyon are superior to those at Boulder Canyon. The Black Canyon site is more accessible, the canyon is narrower, the gorge is shallower below water level, the walls are steeper, and a dam of the same height here would cost less and would have a somewhat greater reservoir capacity. The rock formation is less jointed, stands up in sheer cliffs better, exhibits fewer open fractures, is better healed where formerly broken, and is less pervious in mass than is the rock of the other site. The Black Canyon rock is not so hard to drill as that of Boulder Canyon and it will stand better in large tunnel excavations, with less danger to the workmen.

There is no doubt whatever but that the rock formations of this site are competent to carry safely the heavy load and abutment thrusts contemplated. It is well adapted to making a tight seal and for opposing water seepage and circulation under and around the ends of the dam. It insures successful tunneling, and, so far as the rock is concerned, the general safety and permanence of the proposed structures.

The Board is of the opinion that the Black Canyon site is suitable for the proposed dam, and is preferable to that of the Boulder Canyon.

The Dam and Incidental Works

The Board is of the opinion that it is feasible from an engineering standpoint to build a dam across the Colorado River at Black Canyon that will safely impound water to an elevation of 550 feet above low water. The cost, however, will be greater than that contemplated in the project authorized in H. R. 5773.

The dam proposed by the Bureau of Reclamation and assumed to be the one referred to in H. R. 5773, is of the gravity type, curved in plan, with allowable stresses as high as 40 tons per square foot.

It is the opinion of the Board that a dam of the gravity type is suitable for the site in question, and that such a dam built across Black Canyon would be safe, provided the maximum stresses allowed do not exceed those adopted in standard practice.

The proposed dam would be by far the highest yet constructed and would impound 26,000,000 acre feet of water. If it should fail, the flood created would probably destroy Needles, Topock, Parker, Blythe, Yuma, and permanently destroy the levees of the Imperial District, creating a channel into Salton Sea, which would probably be so deep that it would be impracticable to re-establish the Colorado River in its normal course. To avoid such possibilities the proposed dam should be constructed on conservative if not ultra-conservative lines.

Estimates of Cost

The Board in its review of the estimates for the proposed structures has reached the conclusion that such estimates should be modified so as to provide as follows:

Dam and reservoir (26,000,000 acre feet capacity), $70,600,000; 1,000,000 horsepower development, $38,200,000; the All-American Canal, $38,500,000; interest during construction on above, $17,700,000; total, $165,000,000.

In this revision stresses in the dam have been limited to a maximum of 30 tons per square foot, and a diversion capacity of 200,000 second feet is provided. Should the canal to Coachella Valley be considered a part of the main canal, the above estimates would be increased by the sum of $11,000,000. This would make the total estimated cost for all items in H. R. 5773, $176,000,000. These estimates are based on a construction period of seven years.—*Extracts.*

The General Pact for the Renunciation of War

On December 4, 1928, President Coolidge sent the Renunciation of War Treaty to the Senate. It was referred to the Senate Committee on Foreign Relations of which Senator William E. Borah (Idaho, R.) is chairman. Following the customary procedure the committee will consider the treaty in executive session and will report its recommendations to the Senate. The Senate may discuss treaties in executive session or in open session as it sees fit. Because the Renunciation of War Treaty was made public by the Department of State it is expected that it will be discussed in open session.

Official Text of the Kellogg Treaty

THE President of the German Reich, the President of the United States of America, His Majesty the King of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland, the President of the Czecho-Slovak Republic,

Deeply sensible of their solemn duty to promote the welfare of mankind:

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its nation's interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Having decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries:

The President of the German Reich:
D' Gustav Stresemann, Minister for Foreign Affairs;
The President of the United States of America:
The Honorable Frank B. Kellogg, Secretary of State;
His Majesty the King of the Belgians:
Mr. Paul Hymans, Minister for Foreign Affairs, Minister of State;
The President of the French Republic:
Mr. Aristide Briand, Minister for Foreign Affairs;
His Majesty the King of Great Britain, Ireland and the British Dominions Beyond the Seas, Emperor of India:
For Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations:
The Right Honorable Lord Cushendun, Chancellor of the Duchy of Lancaster, Acting Secretary of State for Foreign Affairs;
For the Dominion of Canada:
The Right Honorable William Lyon Mackenzie King, Prime Minister and Minister for External Affairs;
For the Commonwealth of Australia:
The Honorable Alexander John McLachlan, Member of the Executive Federal Council;
For the Dominion of New Zealand:
The Honorable Sir Christopher James Parr, High Commissioner for New Zealand in Great Britain;
For the Union of South Africa:
The Honorable Jacobus Stephanus Smit, High Commissioner for the Union of South Africa in Great Britain;
For the Irish Free State:
Mr. William Thomas Cosgrave, President of the Executive Council;
For India:
The Right Honorable Lord Cushendun, Chancellor of the Duchy of Lancaster, Acting Secretary of State for Foreign Affairs;
His Majesty the King of Italy:
Count Gaetano Manzoni, his Ambassador Extraordinary and Plenipotentiary at Paris;
His Majesty the Emperor of Japan:
Count Uchida, Privy Councillor;
The President of the Republic of Poland:
Mr. A. Zaleski, Minister for Foreign Affairs;
The President of the Czechoslovak Republic:
Dr. Eduard Benès, Minister for Foreign Affairs;

who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

Article 1

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Article 2

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Article 3

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective Plenipotentiaries have signed this Treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at Paris, the twenty-seventh day of August in the year one thousand nine hundred and twenty-eight.

GUSTAV STRESEMAN	C. J. PARR
FRANK B. KELLOGG	J. S. SMIT
PAUL HYMANS	LIAM T. MACCOSGAIR
ARI BRIAND	CUSHENDUN
CUSHENDUN	G. MANZONI
W. L. MACKENZIE KING	UCHIDA
A. J. MCLACHLAN	AUGUST ZALESKI

DR. EDUARD BENES

Provisions of the Treaty Explained

By Hon. Frank B. Kellogg
Secretary of State

THE original suggestion of this movement came from Monsieur Briand, Minister of Foreign Affairs of France, in a proposition to the United States to enter into a bilateral treaty with France to abjure war as a means of settling disputes between them. The American Government believed that this grand conception should be extended to all the nations of the world so that its declaration might become a part of international law and the foundation stone for a temple of everlasting peace. The details of this negotiation lasted more than a year.

The consummation of the treaty was not the work of any single nation or of any individual. It came from the visualized expression of the desolated battlefields, from ruined homes and broken men. Is there any wonder that the people are now demanding some guarantee for peace?

A Simple and Plain Declaration

The treaty is a simple and plain declaration and agreement. It is not cumbered with reservations and conditions stipulating when a nation might be justified in going to war.

We did not attempt to negotiate the treaty with all the nations of the world and make them original signatories. To attempt to negotiate a treaty with over sixty nations would entail so much discussion and so prolong the negotiations as to make it difficult, if not impossible, to sign a treaty and obtain its ratification within a reasonable time. If any one country failed to ratify, the treaty would not go into effect, thereby postponing the matter for an indefinite period. It seemed to me best to select four of the large nations of Europe, the seat of the last war, where there was perhaps more danger of conflict than anywhere else, and Japan in the Far East, and to negotiate with them a treaty which would be open to adhesion by all the nations of the world. I felt sure that a treaty satisfactory to those Powers would be readily accepted by the others. There were two additions to the six original Powers involved in the negotiation, the British Dominions and India and the additional Powers parties to the Locarno treaties.

Locarno and the League

France raised the question of whether the proposed treaty would in any way conflict with the obligations of the Locarno treaties, the League of Nations, or other treaties guaranteeing neutrality. My reply was that I did not understand the League of Nations to impose any obligation to go to war; that the question must ultimately be decided by each country for itself; that if there was any similar obligation in the Locarno treaties, the United States would agree that all of the Powers parties to the Locarno Treaties should become original signatories of the present treaty. The following countries were parties to the Locarno Treaties: Great Britain, France, Belgium, Germany, Italy, Czechoslovakia and Poland. The treaty contained a clause undertaking not to go to war, and if there was a flagrant violation by one of the High Contracting Parties, each of the other parties undertook immediately to come to the help of the party against whom such violation or breach was directed. It, therefore, was simply a matter of law that if any of the parties to the Locarno Treaties went to war in violation of that treaty and were at the same time parties to the mutilateral treaty, they would violate this treaty also; and that it was a general principle of law that if one of the parties to a treaty should violate it, the others would be released, and would be entirely free and under no obligation to take any action unless they saw fit.

All the nations agreed that under these circumstances no modification of the present treaty was needed.

Approved by Fifty-eight Nations

Up to the present time 58 nations have either signed the treaty as original parties, or have adhered to it or have notified the Department of their intention to adhere to it. This is the first time in history when any treaty has received the approval of so many nations of the world.

There are no collateral reservations or amendments made to the treaty as finally agreed upon. The countries were satisfied that no modification of the treaty was necessary to meet their views.

National Defense an Inherent Right

The question was raised as to whether this treaty prevented a country from defending itself in the event of attack. No nation would sign a treaty expressly or clearly implying an obligation denying it the right to defend itself if attacked by any other country. I stated that this was a right inherent in every sovereign state and that it alone is competent to decide whether circumstances require resort to war in self-

defense. If it has a good case, the world will applaud it and not condemn it, but a nation must answer to the tribunal of public opinion as to whether its claim of the right of self-defense is an adequate justification for it to go to war.

Aggressor Not Defined in Treaty

In discussion of the treaty I have noticed the criticism that by recognizing the right of self-defense, the treaty has been greatly weakened—that if a nation should go to war, claiming that it was acting in self-defense, the mere claim must be accepted by the peoples of the world and that, therefore, the multilateral treaty does not change the present juridical position. I cannot agree with this criticism. A nation claiming to act in self-defense must justify itself before the bar of world opinion as well as before the signatories of the treaty. For that reason I declined to place in the treaty a definition of aggressor or of self-defense because I believed that no comprehensive legalistic definition could be framed in advance. Such an attempt would have led to endless difficulty.

Technical Definitions Easily Evaded

For years statesmen interested in preventing war have tried to frame definitions of aggressor and the right of self-defense in an attempt to prevent conflicts between states. They have failed to accomplish this object. Furthermore, technical definitions are easily evaded by a nation which desires to go to war for selfish purposes. It, therefore, seemed best simply to make a broad declaration against war. This would make it more difficult rather than less difficult for an aggressor nation to prove its innocence. The mere claim of self-defense is not going to justify a nation before the world.

Sanctions Disapproved

Furthermore, I do not believe that any tribunal can be set up to decide this question infallibly. To attempt to negotiate a treaty establishing such a tribunal would meet with endless difficulties and the opposition of many nations. The United States and many countries would never have become parties to a treaty submitting for determination to a tribunal the question of the right of self-defense; certainly not if the decision of the tribunal was to be followed by the application of sanctions or by military action to punish the offending state. I have the greatest hope that in the advancement of our civilization all peoples will be trained in the thought and come to the belief that nations in their relations with each other should be governed by principles of law and that the decisions of arbitrators or judicial tribunals and the efforts of conciliation commissions should be relied upon in the settlement of international disputes rather than war. But this stage of human development must come by education, by experience, through treaties of arbitration and solemn agreements not to resort to war.

Release from Treaty Obligations

Another question which has been raised in connection with the treaty was as to whether, if any country violated the treaty, the other parties would be released from any obligation as to the belligerent state. I have no doubt whatever of the general principle of law governing this question and therefore declined to place in the treaty a reservation to that effect. Recognition of this principle was, however, included in the preamble, "Any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty."

What were the benefits to be furnished? An unconditional agreement not to go to war. This is the recognition of a general principle that if one nation violates the treaty, it is deprived of the benefits of this agreement and the other parties are therefore necessarily released from their obligations as to the belligerent state.

Nations Will Not Submit to Tribunals

I have seen claims that this treaty is weak because it does not provide the means for enforcing it either by military or other sanctions against the treaty-breaking state. As I have said, I do not believe the United States or many nations of the world would be willing to submit to any tribunal to decide the question of whether a nation had violated this treaty or irrevocably pledge themselves to military or other action to enforce it. My personal opinion is that such alliances have been futile in the past and will be in the future; that the carrying out of this treaty must rest on the solemn pledges and the honor of nations.

No Foreign Entanglements

It has also been said that the treaty entangles us in the affairs of Europe. It no more entangles us in the political affairs of foreign countries than any other treaties which we have made and if, through any such fear, the United States cannot take any step towards the maintenance of world peace it would be a sad commentary on our intelligence and patriotism. But, it is said, we are under moral obligations, though not under binding written obligations, to apply sanctions to punish a treaty-breaking state or to enforce its obligations. No one of the governments in any of the notes leading up to the signing of this treaty made any such claim, and there is not a word in the treaty or in the correspondence that intimates that there is such an obligation.

No Military Alliances

I made it perfectly plain. I said, "I cannot state too emphatically that it (the United States) will not become a party to any agreement which directly or indirectly, expressly or by implication, is a military alliance. The United States cannot obligate itself in advance to use its armed forces against any other nation of the world. It does not believe that the peace of the world or of Europe depends upon or can be assured by treaties of military alliance, the futility of which as guarantors is repeatedly demonstrated in the pages of history."

The Duty of the United States

I know of no moral obligation to agree to apply sanctions or to punish a treaty-breaking state unless there is some promise to do so, and no one can claim that there is such a promise in this treaty. The United States has always had a deep interest in the maintenance of peace all over the world. In modern times no great war can occur without seriously affecting every nation. Because we did not approve the Treaty of Versailles and the League of Nations in all respects, it has been assumed by some that we no longer take any interest in Europe and world affairs. I, for one, do not accept this as a just estimate of our national character and vision.

I believe it is the bounden duty of the United States in every way possible, by its example, by treaties of arbitration and conciliation, and by solemn pledges against war, to do what it can to advance peace and thus to bring about realization of the highest civilization.—*Extracts, see 1, page 358.*

The Problem of Reapportionment of the House of Representatives

Since the Census of 1920 was taken various efforts have been made to obtain action by the House of Representatives on a Reapportionment Bill. The matter is again up and has aroused interest in every State in the Union, since under a Reapportionment some states would lose and some would gain in numerical membership in the House if pending bills become law.

Record of the House on Reapportionment since 1920

THE Fourteenth Census of population was taken as of January 1, 1920, and the Director of the Census, submitted the figures of the total population of the United States to Congress on October 7, 1920.

During the Sixty-sixth Congress, third session, the Committee on the Census reported H. R. 14498, a bill providing that after the third day of March, 1923, the House of Representatives shall be composed of 483 Members. Under this apportionment no State would have lost a member.

This bill as amended, provided for a House of 435 Members, passed the House on January 19, 1921, but the Senate failed to act upon it before the close of the session.

During the Sixty-seventh Congress, first session, the Committee on the Census reported H. R. 7882, a bill providing that after the third day of March, 1923, the House of Representatives shall be composed of 460 Members. Under this bill Maine and Missouri each would have lost a Member. An effort to amend this bill to read 435 failed. A motion to recommit this bill to the committee was agreed to by a margin of four votes, and no further action was taken by the committee.

The Committee on the Census did not report a bill during the Sixty-eighth Congress.

During the Sixty-ninth Congress an effort was made on the floor of the House to take up reapportionment as a privileged question and discharge the Committee on the Census from consideration of H. R. 111. The Speaker submitted the question to the House for its determination. The House by a vote of 87 yeas and 265 nays determined that the consideration of this bill was not in order.

On March 3, 1927, a motion was made to suspend the rules and pass H. R. 17378, a bill providing that after the third day of March, 1933, the House of Representatives shall be composed of 435 Members, but this motion was defeated by a vote of 187 yeas and 199 nays.

On April 4, 1928, the House Committee on the Census reported H. R. 11725. The bill was debated in the House on May 17 and 18 and on the latter date was recommitted by a vote of 186 to 164.

On December 3, 1928, Representative McLeod (Mich., R.) introduced in the House a resolution to discharge the Committee on the Census from consideration of the bill and to make reapportionment the privileged business of the House. This resolution was referred to the Committee on Rules.

What the U. S. Constitution Provides

ARTICLE I, section 2, clause 3:

"The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

Article I, section 4, clause 1:

"The time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of chosing Senators."

Article I, section 8, clause 18:

"The Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in department or officer thereof."

Amendment 14, section 2:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representative in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the whole number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Amendment 14, section 5:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

What the Reapportionment Bill Provides

Analysis of Measure Reported from the House Committee on the Census, April 4, 1928 and Recommitted May 18, 1928

THE provisions of the Reapportionment Bill (H. R. 11725), are as follows:

SEC. 1 provides that as soon as practicable after the fifteenth and each subsequent decennial census, the Secretary of Commerce shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under such census, and the number of Representatives to which each State would be entitled under an apportionment of four hundred and thirty-five Representatives made in the following manner: By apportioning one Representative to each State (as required by the Constitution) and by apportioning the remainder of the four hundred and thirty-five Representatives among the several States according to their respective numbers as shown by such census, by the method known as the method of major fractions.

SEC. 2 provides (a) that if the Congress to which the statement required by section 1 is transmitted fails to enact a law apportioning the Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment on the basis of the next decennial census, to the number of Representatives shown in the statement; and it shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives-elect.

(b) This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by section 1 in respect of such census is transmitted to the Congress on or before the first day of the first regular session which begins after the taking of such census has begun.

SEC. 3 provides that in each State entitled under the act to more than one Representative, the Representatives to which such State may be entitled in the Seventy-third and each subsequent Congress shall be elected by districts equal in number to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one Representative. Each such district shall be composed of contiguous and compact territory and contain as nearly as practicable the same number of individuals.

SEC. 4 provides that in the election of Representatives to the Seventy-third or any subsequent Congress in any State which under the apportionment provided for in section 2 is given an increased number of Representatives, the additional Representative or Representatives apportioned to such State shall be elected by the State at large, and the other Representatives to which the State is entitled shall be elected as theretofore, until such State is redistricted in the manner provided by the laws thereof and in accordance with the provisions of section 3 of this act.

SEC. 5 provides that in the election of Representatives to the Seventy-third or any subsequent Congress in any State which under the apportionment provided for in section 2 is given a decreased number of Representatives, the whole number of Representatives to which such State is entitled shall be elected by the State at large until such State is redistricted in the manner provided by the laws thereof and in accordance with the provisions of section 3 of this act.

SEC. 6 provides that candidates for Representatives at large shall be nominated, unless the State concerned shall provide otherwise, in the same manner in which candidates for governor in that State are nominated.

Mr. Longworth Urges Reapportionment

In a Letter to the Committee on the Census the Speaker of the House Recommends Action on the Bill.

MAY I be permitted to express my sincere hope that a bill may be reported substantially the same as the bill introduced by yourself, which was acted upon in the House during the last session—that is to say, a bill maintaining the House at its present size, but reapportioning the Members among the different States on the basis of the coming 1930 Federal census.

I am entirely opposed to any increase in the present size of the House. The average increase of population of the United States for the past 60 or 70 years, as I understand it, has been such as to justify an increase in the membership of the House, on the basis that no State should lose any of its Representatives, by about 50 every 10 years. Upon this basis the membership of the House, apportioned under the 1930 Census, would be increased to probably as many as 540. Besides making necessary a remodeling of the south wing of the Capitol the House would become such an unwieldly body as to seriously interfere with the consideration and passage of proper legislation.

Of course it is hard for some States to lose Representatives, and hard, too, for Members to give up their seats, but it seems to me that Congress is subject to legitimate criticism for having failed to act for some years, and that we ought no longer deny to the communities where large increases of population have occurred the right to the proportionate representation guaranteed to them by the Constitution.—*Extracts, see 2, page 358.*

Majority and Minority Committee Reports on Reapportionment

The Majority Report

Submitted to the House by Representative E. Hart Fenn (Conn., R.), Chairman of the Committee on the Census, April 4, 1928

The last reapportionment was made in 1911 on the basis of the 1910 Census. This allocated 435 Members among the 48 States to represent 91,641,197 people. The population in 1920, excluding the District of Columbia, was 105,271,200. Clearly this indicates that failure to pass a reapportionment act since 1910 has left 13,631,852 people without fair and equitable representation in Congress. The founders of our Government would have been amazed at a situation in which a population three times the population which existed at the time of the adoption of the Constitution is denied fair and equitable representation in the House of Representatives. If this dangerous precedent—failure to reapportion—were repeated in 1930-31, approximately, 31,000,000 people would be legislated for without having fair and equitable representation in what is considered the most representative legislative body in the world.

The Remedy

To prevent this situation from arising this bill is recommended to the House. It is anticipatory legislation. It seeks to meet an emergency situation which might develop in 1930. This type of legislation is not without precedent. In 1850 the Thirtieth Congress provided that the future reapportionment made on the basis of the 1850 Census should be made by the Secretary of the Interior, and it was so made and approved.

The committee feels that the same forces and conditions which prevented a reapportionment in 1920 might arise in 1930. In fact, in some respects the situation might be even more acute because of the great increase in population since 1920.

The technical reason given for failure to reapportion in 1920 was that the census of 1920 did not fairly represent the population of the rural districts. This charge was based on two grounds:

First. That the census of population was taken as of January 1, 1920, which was considered unfair to the rural districts, especially in the years following the close of the World War; and

Second. That the actual enumeration was not efficient.

Notwithstanding this the debates in Congress show that the real stumbling block was the fact that unless the size of the House were increased far beyond its then membership many States would have lost one or more representatives by the apportionment bill proposed in 1920.

Indiana, 1; Iowa, 1; Kansas, 1; Kentucky, 1; Louisiana, 1; Maine, 1; Mississippi, 1; Missouri, 2; Nebraska, 1; Rhode Island, 1; and Vermont, 1 making a total of 12.

The bill reported to the House in 1920 provided for a membership of 460. This was objected to on the ground that the House would have become too large and unwieldy, and even at this figure (460) Maine and Missouri each would have lost a Representative. To have preserved the membership of Maine and Missouri it would have been necessary to increase the size of the House to 483.

The estimated population for 1930 is approximately 123,000,000. If the House membership were retained at its present size (435) and the same mathematical method used for apportionment as was used in 1910, namely, the method of major fractions, the following losses would occur: Alabama, 1; Indiana, 2; Iowa, 2; Kansas, 1; Kentucky, 2; Louisiana, 1; Maine, 1; Massachusetts, 1; Mississippi, 2; Missouri, 3; Nebraska, 1; New York, 1; North Dakota, 1; Pennsylvania, 1; Tennessee, 1; Vermont, 1 and Virginia, 1 making a total of 23.

It is obvious that the same motive which actuated many members to vote against the bill in 1920 would operate with greater effect in 1930, as shown by the preceding table, and to satisfy the membership of those States which would lose, the size of the House would have to be increased to approximately 535. It takes no great amount of imagination to visualize the amount of opposition that might naturally rise up against a proposal which would increase the membership from 435 to 535. It is logical to assume, therefore, there might be discontent and opposition on the part of members of States which are likely to lose in 1930.

It is fair to assume that the pressure for reapportionment would be equally great on the part of those States which would gain in 1930. Arizona, 1; California, 6; Connecticut, 1; Florida, 1; Michigan, 4; New Jersey, 2; North Carolina, 1; Ohio, 3; Oklahoma, 1; Texas, 2; Washington, 1; making a total of 23.

The committee desires to caution the Members of the House in the use of the 1930 estimate of population. At best the 1930 figures, at this time, are not to be taken too seriously either as the aggregate population of the country, or the distribution of population among the several States.

The 1930 population estimates, it should be emphasized, are only rough approximations derived from the increase of population from 1910 to 1920 and the record of births and deaths, immigration and emigration, from 1920 to 1927.

Breaking a Possible Deadlock

It is to avoid, so far as possible, this possible deadlock between the States that gain and the States that lose that the committee feels justified in recommending H. R. 11725. The bill will be analyzed section by section presently.

The general principle of the bill is simply this: If Congress fails to reapportion in 1930-31, then automatically the House is reapportioned in accordance with the tabulation transmitted by the Secretary of Commerce in his ministerial capacity as provided for in this bill; the tabulations transmitted to Congress are on the basis of the 1930 census, with the House membership remaining at 435.

An analysis of the bill will show that Congress always reserves to itself the right to make the reapportionment at any time it sees fit to do so. It is only in the event that Congress fails to do this that the provision for the automatic reapportionment goes into effect, and then only remains in effect until action is taken by Congress.

Arguments for the Bill

Power of Congress.—It is apparent from a reading of the bill that Congress does not divest itself of any authority. There is nothing in the bill which would preclude Congress at any time in the future, that is, at any time between 1930 and 1940, from passing an apportionment bill of any character it sees fit to pass, as provided for in the Constitution. Congress might increase the size of the House to 535, it might make it 500, it might make it 475, or leave it where it is. In this bill there is no suggestion made to any future Congress as to what the size of the House membership shall be.

Neither is any future Congress bound as to the method to be used in allocating the membership of the House. On this matter also the future Congresses are free to act just as they would be if no legislation were enacted of the kind here recommended. It should be borne in mind, and the committee desires to state again, that even though the Seventy-first Congress fails to take action and the apportionment tabulated by the Secretary of Commerce becomes legally operative, the Seventy-second and every succeeding Congress is still free to enact apportionment legislation.

The sole and ultimate effect, therefore, of this proposed legislation would be to provide for a reapportionment based upon a tabulation made by an executive department of the Government acting in a ministerial capacity, which would remain in force and effect until Congress itself should act. The effect of this would be to have decennial reapportionment as contemplated by the Constitution.

The committee is strongly of the opinion that the failure to reapportion is a violation of the spirit, if not of the letter of the Constitution. It holds the view that no section of the Constitution is more fundamental to our Government than this section. Without its observance representative government becomes a sham.

This being so, the question might arise why not report out a reapportionment bill now on the basis of the 1920 Census? The committee feels that this would be a gesture at this time. There is not sufficient sentiment in the committee or in the House for such a proposition. We are too close to the 1930 Census to prescribe now, at this late date, for a reapportionment on a census taken nearly eight years ago and on the basis of an enumeration the accuracy and fairness of which have been seriously questioned.

The Minority Report

We desire to submit briefly our reasons for opposing this bill. In the first place, this legislation is unnecessary, and is an attempt to bind a future Congress.

It does not propose to reapportion Congress under the Census of 1920, but attempts to legislate for a future Congress relative to a reapportionment on the basis of a census to be taken in 1930. It also attempts to arbitrarily fix the size of the House at 435 Members without first taking into consideration the inequities and injustices that might be avoided by adjusting the size of the House under the census of 1930 to take care of all of the States.

It proposes to lay down a formula, which they call "major fractions," and which few Members of the House will understand and fewer still can explain.

It is proposed also to delegate to the Secretary of Commerce the apportioning power, which is primarily vested in the Congress of the United States. Thus in case Congress failed to act at the first session after the taking of the decennial census, the executive department charged with the duty of taking the census would also have placed in its hands the power of reapportioning the House of Representatives under that census.

In order to avoid the absurd and ridiculous situation in which the passage of this bill would place the Congress, we respectfully submit that it would be better to wait until after the taking of the census of 1930, and then have the House reapportion its membership according to that census.

J. E. RANKIN, Miss., D.
ARTHUR H. GREENWOOD, Ind., D.
RALPH F. LOZIER, Mo., D.
S. RUTHERFORD, Ga., D.
HENRY D. MOORMAN, Ky., D.
JAMES M. FITZPATRICK, Ky., D.
RENE L. DE ROUEN, La., D.

What is the Effect of a "Pocket Veto?"

Brief Chronological History of Pocket Vetoes—The Position Taken by the House Committee on the Judiciary—Arguments before the U. S. Court of Claims—The Decision of the Court—Rulings in the House.

Brief Chronology of Pocket Vetoes

ON November 6, 1812, President Madison sent the following message to Congress (Annals of Congress, Twelfth Congress, Second Session, p. 17):

"To the Senate and House of Representatives of the United States:

"The bill, entitled 'An act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization,' which passed the two Houses at the last session of Congress, having appeared to me liable to abuse by aliens having no real purpose of effectuating a naturalization, and therefore not been signed; and having been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law. I also recommend that provision be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes."

President Jackson's Messages

On December 6, 1832, President Jackson returned to the House, in which it had originated, a bill relating to harbor improvements. (9 Cong. Debates, Pt. I, p. 819; Richardson, Messages of the Presidents, II, p. 638; Senate Misc. Documents, 49th Cong., 2nd Sess., vol. 2, p. 104.) This was a bill which had been passed at the first session of the 22d Congress. The President's message was sent at the opening of the second session of that Congress. He said:

"Having maturely considered that bill within the time allowed me by the Constitution, and being convinced that some of its provisions conflict with the rule adopted for my guide on this subject of legislation, I have been compelled to withhold from it my signature; and it has, therefore, failed to become a law."

The Senate Document referred to says that—

"The veto message was referred by the House of Representatives to its Committee on Internal Improvements."

On December 4, 1833 (10 Cong. Debates, Pt. 4, Appendix, 77), President Jackson returned to the Senate, in which a land bill had originated, that bill and the reasons which had caused him to withhold his approval of it. The bill had been sent to him at the close of the last session of Congress. It will be observed that the message referred to a bill which had been passed at the end of the last session of the Twenty-second Congress and that this message was sent at the opening of the first session of the Twenty-third Congress, so that it was not strictly a veto message. Senator Poindexter declared (10 Cong. Debates, pt. 1, p. 15):

"This was one of the acts of the Executive which was out of order. He had sent to the Senate his constitutional objections to a bill which had become defunct by the expiration of the last Congress. It was a document intended not for the Senate, but through that body to give to the people the reasons by which he had been influenced."

On December 1, 1834, in his Sixth Annual Message to Congress (11th Cong. Debates, pt. 2, Appendix, p. 9; Richardson, Messages, III, 118; Senate Document, ibid., p. 144), President Jackson, writing to the 23d Congress at its second session concerning a bill passed at its first session, said:

"I have not been able to satisfy myself that the bill entitled 'An Act to improve the Navigation of the Wabash River,' which was sent to me at the close of your last session, ought to pass, and I have therefore withheld from it my approval and now return it to the Senate, the body in which it originated."

The Senate Document says:

"The next day after this message was received by the Senate, a resolution for the improvement of the Wabash River was introduced. It established a port of entry on the river, at Lafayette, which, it was thought, would secure the President's approval. The Senate passed the bill, but the House did not act upon it."

President Tyler to the House of Representatives

On December 14, 1842, during the third session of the 27th Congress, President Tyler sent to the House of Representatives the following message (12 Cong. Globe, 52; Richardson, Messages, IV, p. 255; Senate Document, ibid., p. 179):

"To the House of Representatives:

"Two bills were presented to me at the last session of Congress, which originated in the House of Representatives, neither of which was signed by me; and both having been presented within ten days of the close of the session, neither has become a law.

"The first of these was a bill entitled, 'An Act to repeal the proviso of the sixth section of the act entitled 'An Act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights,' approved September 4, 1841.

"This bill was presented to me on Tuesday, the 30th of August, at twenty-four minutes after 4 o'clock in the afternoon. For my opinions relative to the provisions contained in this bill it is only necessary that I should refer to previous communications made by me to the House of Representatives.

"The other bill was entitled 'An Act regulating the taking of testimony in cases of contested elections, and for other purposes.' This bill was presented to me at a quarter past 1 o'clock on Wednesday, the 31st day of August. The two Houses, by concurrent vote, had already agreed to terminate the session by adjournment at 2 o'clock on that day—that is to say—within three quarters of an hour from the time the bill was placed in my hands. It was a bill containing twenty-seven sections, and, I need not say, of an important nature.

"On its presentment to me its reading was immediately commenced, but was interrupted by so many communications from the Senate and so many other causes operating at the last hour of the session that it was impossible to read the bill understandingly and with proper deliberation before the hour fixed for the adjournment of the two Houses; and this, I presume, is a sufficient reason for neither signing the bill nor returning it with my objections * * *.

"As the bill has failed under the provisions of the Constitution to become a law, I abstain from expressing my opinions upon its several provisions, keeping myself wholly uncommitted as to my ultimate action on any similar measure should the House think it proper to originate it *de novo* except so far as my opinion on the unqualified power of each to decide for itself upon the elections, returns and qualifications of its own members has been expressed by me in a paper lodged in the Department of State at the time of signing an act entitled 'An act for the apportionment of Representatives among the several States according to the Sixth Census,' approved June 22, 1842, a copy of which is in possession of the House."

Views of President Buchanan

On January 7, 1859, President Buchanan sent to the House of Representatives a message saying that he had not approved a joint resolution adopted on the last day of the last session, respecting the carrying of the mails between St. Joseph, Missouri, and Placerville, California, and giving his reasons for not approving. (Richardson, Messages, V, p. 542; Senate Document, ibid., p. 258.) A note to the Senate Document referred to says:

"The Senate ordered the message to be laid on the table and printed."

On February 1, 1860, President Buchanan sent to the Senate a message stating reasons for not approving a bill making an appropriation for deepening the channel over the St. Clair flats. In this message he discussed the merits of the bill but prefaced that discussion with this statement (Richardson, Messages, V, p. 599; Senate Document, ibid, p. 266):

"It is scarcely necessary to observe that during the closing hours of a session it is impossible for the President on the instant to examine into the merits or demerits of an important bill, involving, as this does, grave questions both of expediency and of constitutional power, with that care and deliberation demanded by his public duty as well as by the best interests of the country. For this reason the Constitution has in all cases allowed him ten days for deliberation, because if a bill be presented to him within the last ten days of the session he is not required to return it, either with an approval or a veto, but may retain it, 'in which case it shall not be a law.' Whilst an occasion can rarely occur when so long a period as ten days would be required to enable the President to decide whether he should approve or veto a bill, yet to deny him even two days on important questions before the adjournment of each session for this purpose, as recommended by a former annual message, would not only be unjust to him, but a violation of the spirit of the Constitution. To require him to approve a bill when it is impossible he could examine into its merits would be to deprive him of the exercise of his constitutional discretion and convert him into a mere register of the decrees of Congress. I therefore deem it a sufficient reason for having retained the bill in question that it was not presented to me until the last day of the session."

The Senate Document referred to says (p. 274):

"The message was read and ordered to be printed and laid on the table."

On February 6, 1860, the President sent the following message to the Senate (Richardson, Messages, V, p. 607; Senate Document, ibid, p. 274):

"On the last day of the last session of Congress a resolution, which had passed both Houses, 'in relation to removal of obstructions to navigation in the mouth of the Mississippi River' was presented to me for approval. I have retained this resolution because it was presented to me at a period when it was impossible to give the subject that examination to which it appeared to be entitled. I need not repeat the views on this point presented in the introductory portion of my message to the Senate of the 2d (1st) instant.

"In addition I would merely observe that although at different periods sums, amounting in the aggregate to $690,000, have been appropriated by Congress for the purpose of removing the bar and obstructions at the mouth of the Mississippi, yet it is now acknowledged that this money has been expended with but little, if any practical benefit to its navigation."

The Senate Document adds:

"It was ordered that the message lie on the table and be printed."

These three messages of President Buchanan was sent to Congress at the second session of the 35th Congress. They dealt with bills passed at the first session of that Congress.

President Lincoln's Pocket Veto

On January 5, 1865, at the second session of the 38th Congress, President Lincoln returned to the House of Representatives without his approval a joint resolution to correct certain clerical errors in the internal revenue act. The joint resolution passed both Houses a few hours before the adjournment of the previous session, although by some accident it had not been presented to the President of the Senate for his signature. Since the adjournment other clerical errors in that act had been discovered and Lincoln thought that all of the errors should be corrected in one act or resolution. (Richardson, Messages, VI, p. 270; Senate Document, ibid., p. 289.)

The Senate Document adds:

"The veto message having been read, the Speaker stated the question to be 'Will the House, on reconsideration, pass the said joint resolution?' but on motion, the message and resolution was referred to the Committee of Ways and Means, which took no action thereupon."

Presidents Grant and Arthur

Under President Grant two bills were pocketed after the end of the first session of the Forty-third Congress—

H. R. 1313, an act for the relief of Alexander Burtch, and H. R. 921, an act to prevent the useless slaughter of buffaloes within the territories of the United States.

A Senate bill, a House Joint Resolution, and a House Bill were pocketed by President Arthur after adjournment of the first session of the 48th Congress on July 7, 1884. Senate Bill 28, an act to confirm the status of John M. Quackenbush as commander in the United States Navy; House Joint Resolution 17, authorizing the appointment and retirement of Samuel Kramer as a chaplain in the Navy of the United States; and House Bill 2487, an act for the relief of Brevet Major General William W. Averell, United States Army, were all received on July 5, two days before the adjournment, and pocketed.

President Cleveland's Many Vetoes

The first session of the 49th Congress ended at 4 P. M., August 5, 1886. President Cleveland pocketed a number of bills, including some which were received while Congress was in session, but less than ten days, excepting Sundays, before the end of the session. Among the bills pocketed were House Bill 5872, an act for the relief of R. D. Beckley and Leon Howard, received July 28; House Bill 658, an act for the relief of Francis W. Holdeman, received July 28; Senate Bill 972, an act for the relief of Thomas P. Morgan, Junior, received July 31; Senate Bill 201, an act to provide for the erection of a public building in the City of Annapolis, Maryland, received August 3; and House Joint Resolution 126, directing payment of the surplus in the treasury on the public debt, received August 5.

The first session of the 50th Congress adjourned Saturday, October 20, 1888. Among the bills pocketed by President Cleveland were House Bill 3300, an act to enable the State of Colorado to select indemnity lands and for other purposes, received October 10; House bill 9447, an act to restore certain money to the fund for erecting a public building at the city of Detroit, received October 12; House bill 8855, an act for the establishment of a light ship with a steam fog signal at Sandy Hook, New York Harbor, received October 17.

Eleven Bills Pocketed by President Harrison

The first session of the 51st Congress adjourned Wednesday, October 1, 1890, at 6 P. M. President Harrison pocketed eleven bills. Among them were Senate Bill 117, an act for the Relief of Edward H. Leib, received September 24; Senate Bill 1552, an act for the relief of Louise Selden, received September 26; and Senate Bill 3414, an act for the relief of James Melvin, received September 26. It will be observed that these bills were received before adjournment, but less than ten days before adjournment.

The first session of the 52d Congress adjourned Friday, August 5, 1892, at 1 P. M. On that day President Harrison received and pocketed House Bill 9657, an act to provide for lowering the height of a bridge proposed to be constructed across the Ohio River between Cincinnati, Ohio, and Covington, Kentucky, by the Cincinnati and Covington Rapid Transit Bridge Company.

The first session of the 53d Congress was an extra session. The second session adjourned August 28, 1894 at 2 P. M., President Cleveland pocketed six bills. For example, he pocketed House Bill 3005, an act for the relief of George Isenstein, received by him on August 20, eight days before the adjournment.

President McKinley's Pocket Vetoes

The first session of the 55th Congress was an extra session. The second session adjourned July 8, 1898, at 2 P. M. President McKinley pocketed Senate Bill 4847, an act to provide an American register for the steamer Titanic, received July 7.

The first session of the 56th Congress adjourned Thursday, June 7, 1900. President McKinley pocketed House Bill 8815, an act to amend chapter 4, title 13, of the Revised Statutes of the United States, received June 5; and Senate Bill 2581, an act to incorporate the National White Cross of America, and for other purposes, received June 6.

Presidents Roosevelt and Taft

The first session of the 59th Congress adjourned June 30, 1906. President Roosevelt pocketed House Bill 12080, an act granting to the Siletz Power and Manufacturing Company a right of way for a water ditch or canal through the Siletz Indian Reservation in Oregon, received June 30; House Bill 7226, an act for the relief of Patrick Conlon, received June 28; Senate Bill 355, an act concerning licensed officers of vessels, received June 29; another bill received June 29 and four more which were received June 30.

The second session of the 61st Congress adjourned June 25, 1910. On that day President Taft pocketed House Bill 18376, an act directing that patents issue to certain settlers for lands within the former Siletz Indian Reservation in Oregon, received June 24; and House Bill 20644, an act for the relief of Frederick B. Neilson, also received June 24.

The second session of the 62d Congress adjourned August 26, 1912, at 4.30 P. M. On that day President Taft pocketed House Bill 21708, an act to authorize the lighting of Piney Branch Road from Georgia Avenue to Butternut Street, which he had received on August 20.

Presidents Wilson, Harding and Coolidge

The second session of the 66th Congress adjourned June 5, 1920. On that day President Wilson pocketed House Resolution 373, declaring that certain acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended and the present or existing emergency expired, received by him on that day, and House Resolution 13329, an act authorizing the Secretary of War to transfer certain surplus material, machinery and equipment to the Department of Agriculture, received by him on June 4.

At the end of the second session of the 67th Congress President Harding pocketed House Bill 10672, an act to amend the act of July 24, 1919, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1920," received by him on September 15, 1922, and pocketed September 19, 1922.

The first session of the 69th Congress adjourned July 3, 1926. In addition to House Bill 5218, received by President Coolidge on July 3 and pocketed on the same day, the President also pocketed on July 3, Senate Bill 3185, received June 24, House bills 534 and 6087 and Senate Bill 3999, received on July 3.—*Extracts, see 3, page 358.*

House Committee on the Judiciary Declares Pocket Vetoed Bill a Law

Report Filed in Sixty-ninth Congress Supports Contention that Adjournment of First Session is not Final Adjournment

THE House Committee on the Judiciary on February 12, 1927, after holding hearings, favorably reported H. Res. 379, with amendments. (Sixty-ninth Congress, Second Session, Report No. 2054).

This resolution was introduced by Representative Tom D. McKeown, (Okla. D.) and declared to be a law H. R. 5218, covering treaty rights of the Shawnee Indians, although the bill had received a "pocket veto" at the hands of President Coolidge.

The Committee on the Judiciary in reporting the resolution, adopted the report of Subcommittee No. 3, of which Representative C. A. Christopher, (S. D. R.) was chairman.

The full text of the McKeown resolution and a summary of the subcommittee report follow:

The McKeown Resolution

"Whereas the Congress of the United States duly passed and presented to the President of the United States on the 3d day of July, 1926, duly attested as required by law, H. R. 5218, entitled 'An act to carry into effect the twelfth article of the treaty between the United States and the Shawnee Tribe of Indians, proclaimed October 14, 1868'; and

"Whereas the President has not returned said bill with his objections in writing to the House of Representatives, in which the bill originated: Therefore be it

"*Resolved,* That H. R. 5218, 'An act to carry into effect the twelfth article of the treaty between the United States and the Shawnee Tribe of Indians, proclaimed October 14, 1868,' has become a law of the United States."

The Subcommittee Report

On July 3, 1926, H. R. 5218, having duly passed both Houses, and been signed by the presiding officers and duly attested as required by law, was presented to the President. Thereafter, on said 3d day of July, 1926, there was a final adjournment of the first session of the Sixty-ninth Congress. The President did not approve of said bill; neither did he disapprove the same nor return the bill to the House in which it originated nor make any return thereof whatever to either House of the legislative branch of the Government.

Question Presented

House Resolution 379 raises the question whether or not the bill H. R. 5218 became a law without the President's approval, under the circumstances set forth in the foregoing statement.

Adjournment

It is apparent the question involved hinges upon the interpretation to be given to this word "adjournment" as used in the Constitution.

Bouvier's Law Dictionary gives the following definition of adjournment:

"The dismissal by some court, legislative assembly, or properly authorized officer, of the business before them, either finally (which, as popularly used, is called an adjournment sine die, without day), or to meet again at another time appointed (which is called a temporary adjournment)."

In Sutherland's work on Statutes and Statutory Construction is the following paragraph under the section entitled, "How a bill will become a law without approval":

Provisions of State Laws

"Without the express approval of the executive a bill passed by the legislature can become a law only in two cases. First, when he fails to return it with his objections within the time prescribed by the Constitution; second when it is passed over his objections by the required vote. Many constitutions provide that an act shall become a law without the governor's signature if he retain it for a certain number of days after it is presented to him for approval, unless the adjournment of the legislature shall prevent him from returning it within that time, and in that case that it shall not become a law. The adjournment intended by this provision is the final adjournment, not adjournments from time to time."

The adjournment on July 3, 1926, was a final adjournment of the first session of the Sixty-ninth Congress, but that did not mark the close of this Congress. The Sixty-ninth Congress was still in existence. The organization of the House held over; bills on the calendar retained their status, and on reconvening in December it resumed its labors where it had left off in July preceding.

In the brief prepared by the Legislative Reference Service are found the following paragraphs:

The Question of Adjournment

"As far as legislative procedure is concerned, there is a significant difference between a temporary adjournment for a few days, or even the adjournment of a legislative session, as contrasted with the adjournment that marks the formal termination of a definite Congress or legislature. A new Congress necessitates the election of new officers and a new legislative program. In the case of the mere adjournment of a legislative session there is only an interruption in legislative activity; the same legislative officers continue in office for the subsequent session, and the unfinished legislative measures of the previous session are brought to completion. According to Prof. Lindsay Rogers—

"The only real difference between a recess and an adjournment is that in the first case a session of Congress is temporarily interrupted, whereas in the latter case the second session of the Sixty-sixth Congress ended on June 5 and the third session will begin in December. Even this difference is one of nomenclature and not of substance, for there is no change in the status of legislative business * * * Bills referred to conference at one session can be reported to Congress at the next, and even where one House asks for a conference at one session, the other House can agree to it at the next session with no further action by the other branch. Finally, * * * bills enrolled and signed by the presiding officers of the two Houses at the close of a session have been sent to the President and approved at the beginning of the next session."

An Early Massachusetts Decision

An early and important judicial opinion, directly bearing upon the question of the meaning of the terms "recess" and "adjournment" is that of Opinion of the Justices (1791). (3 Mass. 567) On February 14, 1791, the Senate of Massachusetts submitted to the justices of the supreme judicial court certain questions relative to the effect of a recess and an adjournment upon pending legislation. On May 9, 1791, the justices delivered the following opinion:

"First. Whether a bill or resolve, having passed both branches of the legislature, and being laid before the governor for his approbation, less than five days before the recess of the general court next preceding the last Wednesday in May, and five days before the period when the Constitution requires the general court shall be dissolved, but not acted upon by him, has by the Constitution the force of law.

The Term Recess Defined

"If by 'recess' in this question is meant a recess after a prerogation, or recess after an adjournment, where there is no subsequent meeting of the same general court on that adjournment, we are clearly of opinion that such bill or resolve has not the force of law.

"Second. Whether a bill or resolve, having passed both branches of the legislature, and being laid before the governor for his approbation, less than five days before any recess of the general court, other than such as is stated in the preceding question, and not acted upon by him, has the force of law.

"If by the term 'recess,' in the second, is intended a recess upon an adjournment, and such bill or resolve lays more than five days before the governor for his approbation, including the days of the court's sitting before the adjournment, and so many days of the court's sitting upon the adjournment, as will make up the full term of five days, without the governor's returning the same, with his reasons for not approving it, we conceive such bill or resolve has the force of law; for all the days of the courts sitting are but one session, although an adjournment intervenes. When a prorogation takes place, the session is ended, and a bill or resolve, after the session is ended, cannot acquire the force of law."

A Tennessee Decision

In the case of Johnson City *v.* Tennessee Eastern Electric Co. (133 Tenn., pp. 637-653), it was held that a recess of the legislature did not prevent the governor from making return of a bill within the constitutional period, and on his failure so to do, it became a law even though he disapproved thereof.

While this is a question not free from difficulty, it is the opinion of your subcommittee the clear intent of the Constitution is that Congress shall have the opportunity to consider the President's objections, if any; that the adjournment contemplated in the constitutional provision relating to presidential objections to bills and return thereof, is the final adjournment of Congress, not an interim adjournment. Therefore your subcommittee is of the belief that the adjournment on July 3, 1926, of the first session of the Sixty-ninth Congress, did not suspend the President's duty with reference to bills presented to him on that day, wherefore H. R. 5218 became a law by the lapse of the constitutional ten days.

House Ruling on Pocket Veto

On February 26, 1927, Representative W. R. Green (Iowa R.), a chairman of the Committee of the Whole on the State of the Union, ruling on a point of order, took the position that a pocket veto did not kill a bill. The question came up on an amendment offered by Representative McKeown to a Deficiency Appropriation bill. Representative Bertrand H. Snell (N. Y. R.) made a ruling in the 70th Congress supporting the Green ruling. Following is the text of the Green ruling.

The question presented by the point of order is somewhat doubtful and has been the subject of much discussion. It probably never will be definitely and finally settled until a decision is rendered by the Supreme Court of the United States. However, the Chair is satisfied that he can take judicial notice of the fact that the act in question passed the House of Representatives and passed the Senate; also that there is a legal presumption that the officers whose duty it was to present the same to the President performed their duty; that that duty has been performed and that the bill reached the President's hands. Such being the case it is not material whether it has been printed as a part of the Federal statutes. The validity of a statute does not depend upon its being printed in some authorized compilation of the Federal laws.

While the resolution reported by the Judiciary Committee is merely the opinion of that committee, it is an opinion rendered by attorneys of the highest standing and reputation. The Chair has had only a brief interval in which to examine this complicated question. The Judiciary Committee had all the time necessary and rendered a unanimous opinion that the statute in question had been legally enacted.

The opinion, therefore, although not binding on the House or binding on the Chair, is very persuasive at this time. Accordingly the Chair overrules the point of order.—*Extracts, see 4, page 358.*

The Pocket Veto is Fully Effective

By Lewis Deschler

Parliamentarian, U. S. House of Representatives

IN attempting to construe what the Constitution means in the seventh section of the first article, where the words "by their adjournment" is used, we must turn to a decision of the Supreme Court, where we find this language:

"In construing the Constitution, the intention of the instrument is to prevail, and this intention is to be collected chiefly from its words understood in their ordinary sense; reference is to be had to the literal meaning of the words to be expounded, their connection with other words, and the general objects to be accomplished."

Now, what is the intention of the instrument as far as the Constitution is concerned? The following is an excerpt of the Constitution that bears on this question:

"* * * If any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

An interpretation of this sentence shows us under what conditions a bill shall be law and under what conditions it shall not be a law. Here we find that in one instance it is a law and in another it is not a law. Now, may one say that in both instances it is a law regardless of what the Constitution says about the matter? If you claim that the bill becomes a law after the expiration of 10 days, even though the President has not signed it, then are you not controverting the provisions of the Constitution? For what you are saying then is that in both cases the bill became law. Isn't that giving an ambiguity to that greatest of all instruments?

Now, may this meaning of the words of the Constitution be narrowed so that adjournment means only final adjournment, the ending of a Congress?

To this question we can only refer to the decision of the Supreme Court in Fairbanks v. United States (181 U. S. 283) where the Court held:

When a Bill Does Not Become a Law

"It would be a strange rule of construction that language granting powers is to be liberally construed and that language of restriction is to be narrowly and technically construed."

Would it not be "narrowly and technically" construing the meaning of the Constitution by saying that the word "adjournment" applied only to the final session of a Congress? The courts have been liberal in construing the power of the President to sign bills during a recess of Congress and have even gone so far as to hold that he may sign bills after Congress has adjourned for a session. Surely the courts would not interpret the Constitution liberally in the first instance and confine it so narrowly in the second.

What Does "Adjournment" Mean?

What does the word "adjournment" mean in the ordinary sense? And as it is used in the Constitution? The first reference to "Adjourn" is found in the fifth section of Article 1, which says:

"* * * but a smaller number may adjourn from day to day * * *."

Taking the word "adjourn" in connection with the phrase in which it is used we find that in this case it means a cessation of the business of that particular day and not an adjournment that may last over a period of time.

Limited Adjournment

In the fourth clause of section 5 of the first Article we find the word used again.

"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

Here we have the word used and a limitation placed upon it. The adjournment is confined to three days.

The last place in the Constitution where the word is used is in section 3, of Article 11, where we find this language: "* * * he may (the President, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; * * *"

The End of a Congress

In this instance the word can only be used in the sense that the President may adjourn them between sessions. At the end of a Congress the adjournment is automatic and the President would have no power to adjourn Congress. The only proper interpretation that can be given to the word here is that adjournment is a session adjournment and not a final adjournment of the Congress.

The Intent of the Constitution

With the exception of the seventh section of Article 1 the word adjourn or adjournment is qualified and clear as to meaning. There is a confinement to the word, so much so that there is no question as to the correct meaning. But, in the seventh section of Article 1 there is no confinement or restriction of the word. Here it is used unqualified. It must mean session adjournment as well as final adjournment. If the adjournment was meant to be confined to the end of a Congress, then surely the framers of that instrument would have inserted in lieu of the word "their" the "final" so that part of the Constitution would read:

"* * * unless the Congress by final adjournment prevent its return, * * *"

We have seen, then, that when the word "adjournment" has been fairly interpreted in connection with the other words of the sentence and also in comparison with the same word as used in other sections of the Constitution the correct

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Does a Pocket Vetoed Bill Become a Law?

On March 28, 1927, attorneys for the Okanogan and other Indians filed a petition with the U. S. Court of Claims to test this question. The Department of Justice filed a demurrer. Arguments of counsel are here presented.

Pro

A. R. Serven
Attorney, Okanogan Indians

THE sole legitimate function of the Executive under the Constitution, as respect legislation passed by the Congress, is to approve or act as an instrument to suggest revision. The power of legislation is placed solely in the Congress of the United States. The Executive can approve and the legislation becomes a law; but he may not approve, and the legislation becomes a law in ten days notwithstanding his inaction. When he thinks Congress has not acted wisely, he may state his reasons and return the legislation to Congress within ten days, but in this case it is left to the Congress itself to finally determine what shall be done with the legislation. The only power conferred on the Executive by the Constitution was that of requiring, by his suggested revision and return of the bill in ten days, that the Congress which passed it reconsider the particular legislation, and if they chose to repass it, to require a two-thirds vote to repass it over the Executive's revisionary objections.

It was never intended, under the Constitution, that the Executive should, by withholding a bill, defeat legislation. The sole purpose of the ten days' clause was to prevent a defeat of legislation by the delays or refusal of the Executive to sign and approve, or to return legislation passed by the Congress and submitted to him.

The sole purpose of the exception clause, here under consideration, was to prevent a defeat of the Executive's desired revision of its legislation by the final adjournment of the Congress that passed it, and the dissolution of that Congress as an organized, functioning legislative body before the expiration of the ten days allotted the Executive for revision and return of its bills. Even in this event, it is the act of Congress in final adjournment, not the act of the Executive in withholding bills, that determines the final fate of its incomplete legislation. In this connection it may be noted that the times of meeting, the times of adjournment, the days and hours of its active legislative settings are all left to the Congress by the Constitution. The short session, ending on March 4th of the odd numbered years is merely a temporary accident of the calendar which all Congresses have had power to correct by fixing a different and earlier date on which to annually convene. It may also be observed that this date and the provision requiring Congress to meet annually were inserted in the Constitution without intent or purpose to affect in any manner the legislative provisions of that instrument, or the expressed powers and functions conferred on Congress and the Executive with respect to the enactment of laws. Also that Congress, should it choose, may remain in continual legislative session or have regular weekly or monthly sessions without in any way affecting the duty of the Executive to return its bills before final adjournment.

The sole object and purpose of the return of the bill is to require a reconsideration of the legislation by the Con-

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Con

George T. Stormont
Attorney, Dept. of Justice

THE question before the Court is whether the retention by the President of bills presented to him less than ten days before the adjournment of the first session of a Congress prevents their becoming laws, or may the President "pocket veto" bills presented less than ten days before such adjournment of Congress.

There seems to be no decision by the Federal courts directly in point, but in the La Abra Silver Mining case (175 U. S. 423), where the Supreme Court sustained a law which had been signed by the President during a recess of Congress, the Court said:

"But if by its action, after the presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill fails, and does not become a law."

While there is no decision by a Federal Court directly in point, the Attorney Generals of the United States have expressed very decided opinions that a bill presented to the President within ten days of the adjournment of the first session of Congress and retained by the President does not become a law.

Suppose Congress having met on the 1st of December were, on the 1st of February, to adjourn until the 1st of October. What would become of a bill presented to the President and not approved within ten days? It could hardly remain in a state of suspended animation until Congress should reconvene. The President could not veto it in the manner provided by the Constitution; and, this being so, it would appear to follow that if not signed it must fail to become a law.

Attorney General Devens in a memorandum submitted to President Hayes, cited in Attorney General Miller's opinion, states his opinion as follows:

"All these provisions indicate that in order to enable the President to return a bill the Houses should be in session; and if by their own act they see fit to adjourn and deprive him of the opportunity to return the bill, with his objections, and are not present themselves to receive and record these objections and to act thereon, the bill cannot become a law unless ten days shall have expired during which the President will have had the opportunity thus to return it. There is no suggestion that he may return it to the Speaker, or Clerk, or any officer of the House; but the return must be made to the House as an organized body."

An examination of the text of the Constitution supports these views. If the framers of the Constitution had intended that the provision should apply only to an adjournment by Congress at the end of the term for which it was elected, they would have expressed that thought more definitely. They clearly intended the provision to apply also to other adjournments, as at the end of a session. They also thought that such an adjournment would prevent the return of a

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A. R. SERVEN—*Continued*

gress, along with the President's specific objections or suggested revision. This object and purpose may reasonably be accomplished so long as the Congress continues to exist as a legislative body which can reconsider the bill and pass upon the President's objection.

If this object may reasonably be accomplished when the same Congress reconvenes from a recess of a day, or over a holiday, or even the Christmas or summer recess, then the real object and purpose of the return of the bill can yet be accomplished notwithstanding the fact that Congress, by temporary recess may have temporarily suspended its active legislative sittings before the end of the ten days allotted the President in which to make such return of bills with his objections.

Return of the vetoed bill with objections may be made to either House, though it be adjourned for the day or the summer recess, by the delivery of the bill and veto message to the recognized officers of that House wherein the bill originated.

The presentation of bills to the President and his return of the same for revision are simply a process in legislative procedure like the handling of bills in committee, or in conference, or by the separate Houses. It is not necessary that each House be actually sitting in active legislative session during every hour or day that the other House sits, or while its committees function, or while the Executive considers legislation. The presentation of bills to the President, his consideration thereof and his return thereof may reasonably be accomplished during hours and days when the Houses of the Congress are not actually sitting in their respective Houses in active legislative session, by delivery of the bill and message to an officer of "that House." U. S. v. Allen, 36 Fed. Rep. 174 is authority that a return to and receipt by a journal clerk of the House is a sufficient return. In actual practice bills are often presented to the President by delivery to his secretary or executive clerk, who receipt for the same on behalf of the President. No one has ever questioned the validity of such presentation.

The return of the bill is simply the act of the Executive in divesting himself of further control of it and placing the bill and his objections in the actual or constructive possession of the House wherein it originated.

From its organization until final adjournment on March 4th of odd numbered years, each Congress continues to be an organized existing legislative body during its two years' existence.

It was never the intention of those who framed the Constitution that the fate of legislation should lie with one man, the Executive, but always with the Congress. If they chose to finally adjourn and disband as an existing legislative body before their last legislative act became enacted into a law, it is their act—not the act of the Executive—that leaves such legislaion as unfinished business at the close of the Congress.

Only the final adjournment of the Congress prevents the return (and reconsideration) of a vetoed bill, and leaves it as the unfinished business of the expiring Congress.

With respect to preventing a return of the bill and a consideration of the Executive's veto objection, it is the character of the adjournment—not its duration—that can prevent such a return. The prevention is limited to prevention caused by adjournment of the Congress. Return must yet be made within ten days to that House wherein the bill originated, though it be in temporary adjournment, while the other House is engaged in impeachment proceedings, or protracted discussion of foreign treaties or other business.

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Con

GEORGE T. STORMONT—*Continued*

bill of which the President disapproved.

In the early days of the Republic, when the President was prevented by the adjournment of Congress from returning a bill with his objections, it was customary for him at the next session to communicate his reasons for not approving of the bill. An examination of a few of such messages, however, will show very clearly that they did not constitute vetoes of these bills which were discussed therein. On the contrary, those messages simply informed Congress of the reasons for the failure of those bills to become laws.

On November 6, 1812, President Madison sent the following message to Congress:

"To the Senate and House of Representatives of the United States:

"The bill, entitled 'An act supplementary to the acts heretofore passed on the subject of a uniform rule of naturalization,' which passed the two Houses at the last session of Congress, having appeared to me liable to abuse by aliens of having no real purpose of effectuating a naturalization, and therefore not been signed; and having been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law. I also recommend that provision be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes."

It will be observed that this message, unlike a veto message, was sent to both Houses of Congress and not simply to the House in which the bill originated; that President Madison did not simply return the bill with his objections but stated that the bill had failed to become a law; and that the term of Congress had not expired but that the second session of the Congress was informed why a bill passed at the first session of that Congress had not become a law.

President Madison clearly understood that he could not return a bill to Congress when that body was not in session. He had had abundant legislative experience in Congress under the Articles of Confederation and he had been a leader in Congress under the Constitution. He could act with authority on this point. And his interpretation of the Constitution is entitled to great weight, for he had taken a more important part in its framing than any other member of the Convention of 1787 and he understood its basic principles most thoroughly.

On December 4, 1833, President Jackson returned to the Senate, in which a land bill had originated, that bill and the reasons which had caused him to withhold his approval of it. The bill had been sent to him at the close of the last session of Congress. The message referred to a bill which had been passed at the end of the last session of the Twenty-second Congress and that this message was sent at the opening of the first session of the Twenty-third Congress, so that it was not strictly a veto message. Senator Poindexter declared:

"This was one of the acts of the Executive which was out of order. He had sent to the Senate his constitutional objections to a bill which had become defunct by the expiration of the last Congress. It was a document intended not for the Senate, but through that body to give to the people the reasons by which he had been influenced."

The Senator was unquestionably in the right when he said

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Pro

A. R. SERVEN—*Continued*

If return must and can be made to that House, though in temporary recess, the Congress being yet in session, then a similar return can be made to that House when both Houses of the Congress are in temporary recess, and thereafter resume active legislative session as an organized existing legislative body for the completion of its unfinished business.

The construction placed upon this clause of the Constitution should be a reasonable, common sense construction, compatible with the purpose of the clause and the object sought to be obtained.

The construction arrived at should be in harmony with other provisions of the Constitution. The construction asserted by defendant and announced by this Court is repugnant to and defeats the revisionary purpose of the veto clause. It is contrary to the spirit and intent of the clause and defeats the purpose of the ten day clause to which it is attached.

Such construction denies the right of Congress to know the specific objection of the Executive to its legislation, and is in derrogation of and defeats the right of the Congress to consider such objections, and revise the bill to conform with them or to repass the legislation, notwithstanding the Executive's objections, by a two-thirds vote.

Such construction is in derrogation of and repugnant to the Constitutional rights of the Houses of Congress to recess at pleasure during its continued existence as a legislative body.

Under the Constitution it is a primary function of Congress to make the laws, the Judicial to interpret them and the Executive to administer them. It is for the Courts alone to construe the Constitution. In such construction the plain language of the Constitution is the best guide. The language should be construed in accord with the spirit of the time of its adoption and the prevailing sentiment of the people. Precedents (Congressional or Executive) are not a first or best guide for construction, and should be resorted to only as a last resource, all other means of interpretation having failed. There are strong Congressional precedents in favor of Petitioners' insistence; why follow Executive precedents, rather than contrary precedents of construction by Congress?

Contemporary or subsequent construction can never abrogate the text of a constitution; it can never fritter away its obvious sense; it can never narrow down its true limitations; it can never enlarge its true boundaries. Acquiescence or sufferance for no length of time can legalize a clear usurpation of power, where people have plainly expressed their will and appointed judicial tribunals to interpret and enforce it. (See Cooley's Constitutional Law, 6th ed. (1890) p. 85.) A claim of power is frequently permitted or yielded to merely because it is claimed, and it may be exercised for a long period in absence of any constitutional right or power, and even in violation of constitutional prohibition without special occasion arising for its interpretation by a court, or any one being sufficiently interested in the subject to raise the question, but these circumstances can not be allowed to sanction a clear infraction of the Constitution, or the neglect to discharge constitutional duties or the disregard of the clear right of the Congress.

Under a common sense construction of the language of this clause the return (and reconsideration) of the bill was not prevented by the adjournment of the Congress for summer recess and the Jurisdictional Act sued on is an existing law through failure of the President to return the same to the Congress within the 10-day period after its presentation to him.—*Extracts, see 5, page 358.*

Con

GEORGE T. STORMONT—*Continued*

that the bill had become defunct by the expiration of the previous Congress. As the Senate ordered the printing of five thousand extra copies of the message, it is possible that it felt that the message was not intended solely for legislative consideration.

On December 6, 1832, President Jackson returned to the House, in which it had originated, a bill relating to harbor improvements. This was a bill which had been passed at the first session of the 22nd Congress. The President's message was sent at the opening of the second session of that Congress. He said:

"Having maturely considered that bill within the time allowed me by the Constitution, and being convinced that some of its provisions conflict with the rule adopted for my guide on this subject of legislation, I have been compelled to withhold from it my signature; and it has, therefore, failed to become a law."

The Senate Document referred to says that—

"The veto message was referred by the House of Representatives to its Committee on Internal Improvements."

Were this a doubtful question, the practice of the Presidents for more than a century would go far to establish a rule they have followed, but defendant submits to the Court that the practice is sanctioned by reason and a fair construction of the Constitution. President Madison, whose opinion is entitled to the highest respect, says:

"having been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law."

This eminent constitutional authority does not argue the point; he affirms it as a self-evident proposition. So does President Jackson, who says, in the message heretofore referred to:

"Having maturely considered that bill within the time allowed me by the Constitution * * * I have been compelled to withhold from it my signature, and it has therefore, failed to become a law."

To the same effect is the following statement of President Tyler:

"As the bill has failed under the Constitution to become a law, I abstain from expressing my opinion upon its several provisions."

President Buchanan more fully than any other President whose messages are mentioned herein sets forth the reasons compelling the Persident to retain bills presented during the closing hours of a session of Congress. He then proceeds to state:

"For this reason, the Constitution has in all cases allowed him ten days for deliberation, because if a bill be presented to him within the last ten days of the session he is not required to return it, either with an approval or a veto, but may retain it, in which case it shall not be a law."

As said by the Supreme Court in the La Abra Silver Mining Co. case:

"But if by its action, after the presentation of a bill to the President during the time given him by the Constitution for an examinaion of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the house in which it originated, then the bill fails and does not become a law."

This, defendant submits to the Court, is precisely what Congress has done in the instant case.—*Extracts, see 3, page 358.*

The U. S. Court of Claims Sustains the Pocket Veto

Chief Justice Campbell Hands Down Decison in Okanogan Case

Campbell, Chief Justice, delivered the opinion of the court:

A petition was filed March 28, 1927, by the Okanogan and other tribes or bands of Indians, alleging that the suit is brought under authority of an act of Congress described as Senate Bill No. 3185, Sixty-ninth Congress, first session, entitled, "An act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims." A copy of this alleged act appears in the petition. It is further alleged that this bill having been duly passed by both Houses of Congress on June 23, 1926, was signed by the presiding officers thereof and "duly attested as by law required" and thereafter, on June 24, 1926, was duly presented to the President of the United States, and that "the said bill not being returned by the President within ten days after it was so presented to him, or at all, the same became and now is a law in like manner as if he had signed it." The demurrer presents the one question whether in the circumstances stated the bill ever became a law.

Article I, section 7, clause 2, of the Constitution of the United States is as follows:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States. If he approves he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. * * * If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevented its return, in which case it shall not be a law."

The bill was presented to the President on June 24, 1926. On July 3, 1926 (eight days thereafter, Sunday excepted), there was a final adjournment of the first session of the Sixty-ninth Congress. The President did not approve or sign the bill. He did not make any return of it to either House. He did not deposit it with the Secretary of State as a law. When the Sixty-ninth Congress reconvened in its second session on December 6, 1926, no return of the bill or of objections thereto had been or was made. These facts, it is urged for the plaintiffs, caused the bill to become a law. The Government contends to the contrary. The exact question, it is conceded has not been decided by the Federal courts, but with great industry counsel for the parties have produced historical precedents and decisions by State courts supposed to bear upon or decide similar questions. Under the provision quoted a bill which shall have passed the two Houses of Congress shall, before it becomes a law, be presented to the President. "The only duty required of the President, by the Constitution in regard to a bill which he approves, is that he shall sign it. Nothing more. * * * Even in the event of his approving the bill, it is not required that he shall write on the bill the word approved, nor that he shall date it." *Gardner v. Collector,* 6 Wall. 499, 506. If the bill shall not be returned by him within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it. "Here are two courses of action by the President in reference to a bill presented to him, each of which results in the bill becoming a law. One of them is by signing the bill within ten days and the other is by keeping it ten days and refusing to sign it. * * * Yet, in the latter case, no evidence is required of the President, either by the Constitution or in actual practice, to show that he had ever received or considered the bill." *Gardner v. Collector, Supra.* But if the President does not approve the bill, he shall return it with his objections, and he has ten days (Sundays excepted) within which this duty may be discharged. It seems to us that these provisions are not intended to make the President a part of the law-making power, because Article I, section 1, of the Constitution provides that "all legislative powers herein granted shall be vested in a Congress of the United States" which shall consist of a Senate and House of Representatives. See *Burton v. United States,* 202 U. S. 344, 467. They do not confer the power of peremptory veto, though the term veto is now generally applied to a return of a bill by the President "with his objections." Story gives reasons why the President "should possess a qualified negative." Sec. 884, *et seq.* And Chancellor Kent says: "A qualified negative answers all the salutary purposes of an absolute one, for it is not to be presumed that two-thirds of both Houses of Congress on reconsideration * * * will ever concur in any unconstitutional measure." 1 Kent's Com. 255. In *Weil's case* 29 C. Cls. 523, Judge Nott enters upon a lengthy discussion of the law-making power, which we refer to without committing ourselves to the conclusions reached in the particular case. Pointing out differences between the English and American systems, he says (p. 539): "Under the American Constitution the assent of the President is not essential to the enactment of a single law. His authority over an act of Congress is simply revisory and advisory. * * * If he does not approve, he does not forbid; he does not, in the sense of the Roman law, veto. On the contrary, he returns the bill to Congress with his reasons why it should not become a law—reasons which are not fiats, but which are addressed to the legislative intelligence." And he might have added as further showing that the President's assent is not necessary, that if the requisite two-third of each House approve the bill it becomes a law without being presented again to the President. The plaintiffs' contention would seem to imply that the provision, "If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it," is all that is said, but the contention disregards the following phrase, "unless the Congress by their adjournment prevent its return, in which case it shall not become a law." The ten days are provided for the President's deliberation and the proper formulation of his objections. They are not needed where he approves the bill or where by his inaction he is willing the bill shall become

a law. In the latter case it is declared the bill shall be a law and in another category provided for it is just emphatically declared that the bill shall not be a law, that being where "Congress by their adjournment prevent its return." The contention here is that the bill became a law because the adjournment of the Congress, which took place within the period of ten days (Sundays excepted) was only an adjournment of the first session of the Sixty-ninth Congress, and the President did not return the bill to the Congress in its next session or in the meantime to officers or employees of the House or Senate who may have been in their places and have kept it until the Congress was again in session. Unless we ignore the provision for a return of the bill within ten days (Sundays excepted), in case the President objects to it, it is manifest that unless the concluding phrase, "in which case it shall not be a law," be ignored, there is no merit in the contention. Transmitting the bill to either employees or to the next session will not vitalize a bill that upon the adjournment the Constitution declares shall not be a law. The attempted distinction between adjournment of one or the other session is unsound. The fact in the instant case is that the first session of the Sixty-ninth Congress adjourned several days before the expiration of the ten-day period provided for, and that was an adjournment of the Congress. The Constitution does not limit the time of adjournment to the final adjournment at the second session, and the courts have no right to so limit it. In *La Abra Silver Mining Company v. United States,* 175 U. S. 423, it was held that a bill signed by the President during a recess of the Congress and within the period of ten days (Sundays excepted) after it was presented to him became a law, but the court pretermitted the question whether he can sign a bill after the final adjournment of Congress for the session. In the course of the opinion it is said (p. 454): "But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the presentation of a bill to the President, during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls and does not become a law."

What we have said accords with the early view taken of the effect of an adjournment. In November, 1812, President Madison sent a message to Congress informing them that "the bill failed to become a law" because it had been presented to him "at an hour too near the close of the session to be returned for reconsideration." President Jackson took a like course in 1832 with a bill passed at the first session and presented to him and the Congress had adjourned within the ten-day period. President Tyler informed the Congress in 1842 that two bills had failed to become laws because presented within the period of ten days (Sundays excepted), but in the meantime the Congress had adjourned. As already said, we do not find a provision requiring the President to call attention to the fact that the bill has failed to become a law, though in the instances mentioned and perhaps in others such a course was pursued.

We conclude that the bill in question never became a law, and therefore that the demurrer should be sustained and the petition dismissed. And it is so ordered.

Moss, *Judge;* Graham, *Judge,* and Booth, *Judge,* concur.

Green, *Judge,* took no part in the decision of this case.

Extracts, see 6, page 358.

A Pocket Veto Is Fully Effective?

Continued from page 349

interpretation should be that it means session adjournment as well as the final adjournment of the Congress.

A Famous Court Decision

In the course of the opinion delivered in the case of La Abra Silver Mining Co. v. United States, Justice Harlan said:

"But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls, and does not become law."

The Term of a Congress

It will be noted in the above decision that it says that if Congress "by its action" prevents the President from returning the bill it shall not be law. There is only one instance in which Congress may by its own action prevent such return, and that is at the adjournment for a session. The term of a Congress begins on the 5th of March of the odd numbered years and extends through two years. This results from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, "the first Wednesday in March next" to be "the time for commencing proceedings under the said Constitution." Therefore the succeeding Congress must begin March 4 at 12 o'clock and the preceding Congress must expire at the time for the commencing of the next Congress.

Automatic Adjournment

From this we see that Congress has no control over the final adjournment of a Congress unless they adjourn at a time prior to March 4 at 12 o'clock of the odd numbered year. Thus if a Congress sits continuously until 12 o'clock on March 4 of the odd numbered year it is the duty of the presiding officers of the two Houses to adjourn them. This, then, is an automatic adjournment of a Congress.

So we find that Congress controls the adjournment of a session and itself prevents the return of a bill which the President may not approve. The framers of the Constitution evidently had that in mind when they inserted in the seventh section of Article I that if "Congress by their adjournment prevent its return," it shall not be law.

Although an obiter dictum as expressed by Justice Harlan in the La Abra Silver Mining Company case may not be a controlling factor in a subsequent decision directly on the question involved, the opinion expressed in the obiter dictum would very probably be highly respected by another court. Where any particular word or sentence is obscure proof doubtful meaning, taken by itself, its obscurity may be removed by comparing it with the words and sentences with which it stands connected.

EXECUTIVE DEPARTMENT

The White House Calendar

October 20 to December 4

Addresses

November 11—Address of President Coolidge at the observance of the Tenth Anniversary of the Armistice under the auspices of the American Legion at Washington, D. C.

November 16—Address of President Coolidge before the National Grange Convention at Washington, D. C.

December 4—Annual Message of the President of the United States communicated to the two Houses of Congress at the beginning of the Second Session of the Seventieth Congress.

Executive Orders

October 23—An Executive Order classifying certain positions in the Indian Field service, Effective April 1.

October 26—An Executive Order excluding lands from Chelan National Forest in Washington.

November 2—An Executive Order withdrawing certain lots and blocks in the townsite of Osborn, within the Huntley Project irrigation district on the ceded Crow Indian Lands, Montana.

November 2—An Executive Order reserving and setting aside a tract of land at Rockaway Point, Long Island, for use of the War Department in connection with the Fort Tilden Military Reservation.

November 15—An Executive Order extending for ten years the period of trust on four allotments made to Indians of the Winnebago Reservations.

November 16—An Executive Order abolishing St. Vincent, Minn., as a customs port of entry effective 30 days from date of order.

Proclamations

October 27—A proclamation transferring to the Territory of Hawaii title to certain lands in the vicinity of Honolulu.

November 3—A proclamation for the observance of Armistice Day, 1928.

November 16—A proclamation increasing rate of duty on Potassium Permanganate from 4 cents a pound to 6 cents a pound.

Important Civilian Appointments sent to the Senate December 4

J. Reuben Clark, Jr., of Utah to be Under Secretary of State.

William S. Culbertson of Kansas to be Ambassador to Chile.

Jefferson Caffery of Louisiana to be Envoy Extrardinary and Minister Plenipotentiary to Colombia.

H. F. Arthur Schoenfeld of the District of Columbia to be Envoy Extraordinary and Minister Plenipotentiary to Bulgaria.

Warren D. Robbins of New York to be Envoy Extraordinary and Minister Plenipotentiary to Salvador.

Charles S. Wilson of Maine to be Envoy Extraordinary and Minister Plenipotentiary to Rumania.

Thomas H. Bevan of Maryland.
Felix Cole of the District of Columbia.
John K. Davis of Ohio.
George K. Donald of Alabama.
Paul Kanbenshue of Ohio.
North Winship of Georgia.
LaVerne Baldwin of New York.
John B. Faust of South Carolina.
Edward P. Lowry of Illinois.
James L. Park of Pennsylvania.
Clarence J. Spiker of the District of Columbia.
Norris B. Chipman of the District of Columbia.
Gaston A. Cournoyer of New Hampshire.
Cecil Wayne Gray of Tennessee.
Raymond A. Hare of Iowa.
Frederick P. Latimer, Jr., of Connecticut.
Edward S. Maney of Texas.
Ralph Miller of New York.
Sheldon T. Mills of Oregon.
James B. Pilcher of Alabama.
Horace H. Smith of Ohio.
L. Rutherford Stuyvesant of New Jersey.
Mannix Walker of the District of Columbia.
Robert O'D. Hinckley.

Sherman J. Lowell of New York to be a member of the United States Tariff Commission for a term of 12 years from September 8, 1928.

JUDICIAL DEPARTMENT

The Month in the Supreme Court

October 29 to November 26

On November 19 the Supreme Court of the United States reconvened after having taken a recess from October 29. On November 19 the Court handed down written decisions in 14 cases; granted writs of certiorari in 3 cases and denied 13 petitions. Six cases were dismissed for lack of jurisdiction or want of substantial Federal question.

On November 26 the Court handed down six per curiam decisions without opinion and one decision with written opinion (see below). The Court granted 2 petitions for writs of certiorari, denied 17 and dismissed one case upon motion of the petitioners.

Seamen Given Right to Recover Damages.

The Case—No. 49, Pacific Steamship Company, petitioner, vs. Carl G. Peterson On writ of Certiorari to the Circuit Court of Appeals for the Ninth District.

The Decision—The judgment of the Circuit Court of Appeals was affirmed, the Supreme Court holding that the right of a seaman to recover, under the measure of relief accorded by the Merchant Marine Act of 1920, damages for personal injuries at sea resulting from negligence of the ship's master is not barred by the fact that the seaman had previously demanded and had been paid maintenance, medical treatment and wages by his employer.

The Opinion—Mr. Justice Sanford delivered the opinion of the Court (the result of which was concurred in by Mr. Justice Holmes) on November 26, 1928. The opinion, in part, follows:

Peterson, a seaman, brought an action at law in a Superior Court of Washington against his employer, the Pacific Steamship Company, the owner of a domestic merchant vessel on which he was serving, to recover damages for personal injuries suffered at sea on a voyage between the ports of Puget Sound and California.

The complaint charged that the injury resulted from the negligence of the mate of the vessel—there being no charge that the vessel was unseaworthy—and based the right of action expressly on Section 2 of the Seamen's Act of 1915 (1), as amended by Section 33 of the Merchant Marine Act of 1920(2). This provides: "That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employes shall apply (3)."

The Company, in its answer, not only denied the averments of negligence, but alleged, generally, in Par. 2, "that long prior to the commencement of plaintiff's action set out in his said complaint, the plaintiff elected to receive wages to the end of the voyage, and maintenance and cure for any injuries which he received on said voyage; and the plaintiff has received his wages to the end of the voyage and has received maintenance and cure for any injury received, and received the same prior to the filing of his said complaint herein, and he cannot now maintain an action under the Jones Act, or any other act, for damages for any injuries received upon the voyage;" and "for further answer and affirmative defense" alleged, particularly, in Par. 3, that as soon as the vessel arrived at San Francisco the plaintiff was removed from the vessel by the defendant and conveyed to the Marine Hospital for maintenance and cure; that he "has received from the defendant at said hospital maintenance and cure as far as medical and surgical attention can reasonably effect a cure," and also received his wages from the defendant to the end of the voyage, aggregating $41.10, prior to the commencement of the suit; and that "the plaintiff in accepting said wages to the end of the voyage and in permitting defendant to take him to said Marine Hospital . . . and in consenting to go thereto for maintenance and cure for the injuries he received, elected to take compensation for said injury under the general admiralty and maritime law in such cases made and provided, and he has been fully and completely compensated by defendant for said injuries under the said general admiralty and maritime law, and the plaintiff made said election to accept compensation and received the same under the general admiralty and maritime law long prior to the filing of this suit and the plaintiff cannot now elect to sue or maintain this action, for damages under section 20 of the Act of Congress of March 4, 1915, as amended by section 33 of the Act of June 5, 1920, known as the Jones Act."

By the general maritime law of the United States prior to the Merchant Marine Act, a vessel and her owner were liable, in case a seaman fell sick, or was wounded in the service of the ship, to the extent of his maintenance and cure, whether the injuries were received by negligence or accident, and to his wages, at least so long as the voyage was continued, and were liable to an indemnity for injuries received by a seaman in consequence of the unseaworthiness of the ship and her appliances; but a seaman was not allowed to recover an indemnity for injuries sustained through the negligence of the master or any member of the crew.

By Section 33 of the Merchant Marine Act, as heretofore construed, the prior maritime law of the United States was modified by giving to seamen injured through negligence the

rights given to railway employes by the Employers' Liability Act of 1908 and its amendments, and permitting these new substantive rights to be asserted and enforced in actions in personam against the employers in Federal or State courts administering common-law remedies, with the right of trial by jury, or in suits in admiralty in courts administering maritime remedies, without trial by jury.

The defendant contends, on the one hand, that this statute gives an injured seaman the new right of action for damages merely as an alternative right to those provided by the old maritime rules, which he may enforce "at his election," thereby requiring him to elect whether he will proceed for the recovery of maintenance, cure, wages, and indemnity under the old maritime rules, or for the recovery of damages under the new rule; and hence that if he demands and receives from the employer maintenance, cure and wages under the old maritime rules, he is bound by that as an election and cannot thereafter maintain an action for damages under the statute.

The plaintiff contends, on the other hand, that the words "at his election," as used in the statute, refer, at the most, to an election between an action for compensatory damages, on the ground of negligence, under the new rule, and the inconsistent action for indemnity or compensatory damages on the ground of unseaworthiness, under the old maritime rules; and not to an election between an action for damages under the new rule and the consistent and cumulative remedy for maintenance, cure and wages under the old rules.

It was stated, in general terms, in Panama R. R. Co. v. Johnson, that the statute "extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules. The election is between alternatives accorded by the maritime law as modified. . . " And see Engel v. Davenport, supra, at p. 36.

But this general statement does not define the scope of the election or the precise alternative accorded—a question which was not involved or discussed in either of these cases.

What then were the "alternatives" accorded to an injured seaman by the maritime law, as modified, between which the statute grants him an election? Plainly, we think, the right under the new rule to compensatory damages for injuries caused by negligence is not an alternative of the right under the old rule to maintenance, cure and wages—which arises, quite independently of negligence, when the seaman falls sick or is injured in the service of the ship, and grows out of that which was termed in The Montezuma (C. C. A.), 19 Fed. (2d) 355, 356, the "personal indenture" created by the relation of the seaman to his vessel.

In Harden v. Gordon, 2 Mason 541, 11 Fed. Cas. 480, 481—cited with apparent approval in the Osceola case, at p. 172—Mr. Justice Story said that a claim for the expenses of curing a seaman in case of sickness, "constitutes, in contemplation of law, a part of the contract for wages, and is a material ingredient in the compensation, for the labour and services of the seamen."

And in The A. Heaton (C. C.), 43 Fed. 592, 595, Mr. Justice Gray, speaking for the court, said that the right of a seaman to receive his wages to the end of the voyage and to be cured at the ship's expense, being "grounded solely upon the benefit which the ship derived from his service, and having no regard to the question whether his injury has been caused by the fault of others or by mere accident, does not extend to compensation or allowance for the effects of the injury; but it is the nature of an additional privilege, and not of a substitute for or a restriction of other rights and remedies," and "does not, therefore, displace or affect the right of the seaman to recover against the master or owners for injuries by their unlawful or negligent acts."

In short, the right to maintenance, cure and wages, implied in law as a contractual obligations arising out of the nature of the employment, is independent of the right to indemnity or compensatory damages for an injury caused by negligence; and these two rights are consistent and cumulative.

The right to recover compensatory damages under the new rule for injuries caused by negligence is, however, an alternative of the right to recover indemnity under the old rules on the ground that the injuries were occasioned by unseaworthiness; and it is between these two inconsistent remedies for an injury, both grounded on tort, that we think an election is to be made under the maritime law as modified by the statute.

Unseaworthiness, as is well understood, embraces certain species of negligence; while the statute includes several additional species not embraced in that term. But, whether or not the seaman's injuries were occasioned by the unseaworthiness of the vessel or by the negligence of the master or members of the crew, or both combined, there is but a single wrongful invasion of his primary right of bodily safety and but a single legal wrong, Baltimore S. S. Co. v. Phillips, supra, 321, for which he is entitled to but one indemnity by way of compensatory damages.

Considering the statute in the light of these several remedies and the extent of the inconsistency between them, we agree with the view expressed by the Supreme Court of Washington that the statute was not intended to restrict in any way the long-established right of a seaman to maintenance, cure and wages—to which no reference was made in the modifying statute.

And we conclude that the alternative measures of relief accorded him, between which he is given an election, are merely the right under the new rule to recover compensatory damages for injuries caused by negligence and the right under the old rules to recover indemnity for injuries occasioned by unseaworthiness; and that no election is required between the right to recover compensatory damages for a tortious injury under the new rule and the contractual right to maintenance, cure and wages under the old rules—the latter being a cumulative right in no sense inconsistent with, or an alternative of, the right to recover compensatory damages.

It results that there was no error in the rulings as to the affirmative defense interposed by the defendant. And the judgment is affirmed.

Mr. Justice Holmes concurs in the result.

Uncle Sam's Book Shelf

Editor's Note—This department of THE CONGRESSIONAL DIGEST was established as a special aid to librarians and students. It resulted in a steady demand on the Government Printing Office for many documents and on July 1, 1928, the Government Printing Office inaugurated the publication of a weekly list of the available publications.

Having done the pioneering work in this field, THE CONGRESSIONAL DIGEST feels that it has placed its many readers in direct contact with the Government Printing Office and consequently may use the space occupied by this department for other helpful features.

Therefore "Uncle Sam's Bookshelf" will be discontinued. Those of our readers who wish to obtain the Government's weekly list of publications may write to the Superintendent of Documents, Government Printing Office, Washington, D. C. Their names will be placed on the mailing list and they will receive the weekly list free of charge.

Budget of the United States—1930

Continued from page 334

for obtaining weather predictions, fighting the boll weevil, and for forest patrol. The total contemplated for all these purposes, direct and indirect, in 1930 is $140,631,824.

A Healthy National Activity

The rapid and legitimate expansion of our air service, military and commercial, is an achievement in which we can all take pride. Without artificial stimulation this extraordinary new factor in national defense and commerce has grown from modest and discouraging beginnings into a strong, healthy, promising national activity. To-day we have more airplane manufactories than we have automobile factories. To-day air mail lines cross the heavens in a rapidly increasing network of speedy communication. Freight and passenger carrying airplanes are increasing and a growing demand is seen for airplanes for private use. The generous contribution made by the United States Government to this great and growing activity has been justified by the progress made and the results achieved.

The history of these great and necessary projects emphasizes the fact that there has been no niggardly provision for pressing Government needs. While constructive economy has been demanded from Federal administrators, these economies have not deprived essential activities of funds, but have conserved and made available means for important necessary purposes. Our splendid Treasury is not a bottomless, automatically replenishing fountain of fiscal supply, and its outflow must be eternally watched and carefully and wisely directed into proper channels.

Congress Congratulated

In submitting this, the eighth Budget of the United States, the Chief Executive wishes to express his appreciation of the courteous, friendly, and businesslike consideration accorded his estimates by the Congress. It is a matter for congratulation that after the careful and painstaking consideration given Budget estimates by the congressional committees there should be so little difference in results. Congressional action has amounted to practical ratification of the Budget estimates. It is also a matter for congratulation that congressional revision has resulted in reduction of estimates. The first seven Budgets (fiscal years 1923 to 1929) carried estimates totaling $27,000,475,970, which supplemental estimates increased to $29,800,233,790. On these estimates Congress appropriated $29,478,282,294, a reduction below Budget requests of $321,951,495. Of this reduction $135,468,732 pertains to the Budget for 1923, a reduction made possible by the Naval Disarmament Conference and the resulting curtailment of naval building projects as well as modifications in the Veterans' Bureau and Shipping Board programs. The total reduction in the six Budgets following 1923 is $655,971,630, a percentage of difference of only one-fifth of 1 per cent. To the Chief Executive nothing could be more gratifying than the hearty cooperation of the Congress with the President on Budget matters evidenced by these figures.

Sources from which Material in this Number is Taken

Articles for which no source is given have been specially prepared for this number of THE CONGRESSIONAL DIGEST

1. Speech of Secretary Kellogg before the World Alliance for International Friendship, New York, November 11, 1928.

2. Report of House Committee on the Census on H. R. 11725, April 4, 1928.

3. Brief of Assistant U. S. Attorney General in the case of the Okanogan Indians v. the U. S., U. S. Court of Claims, No. H-121, July 6, 1927.

4. Congressional Record, Feb. 26, 1927.

5. Brief of Counsel for the Okanogan Indians filed with the Court of Claims, March 28, 1927.

6. Decision of Chief Justice Campbell, U. S. Court of Claims, April 16, 1928.

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